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2.

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE

EASTERN DISTRICT OF PENNSYLVANIA.

UNITED STATES vs. HENRY HERTZ

ET. AL.

CHARGED WITH HIRING AND RETAINING PERSONS TO GO BEYOND THE JURISDICTION OF THE UNITED STATES, WITH THE INTENT TO ENLIST IN THE BRITISH FOREIGN LEGION, FOR THE CRIMEA.

TAKEN IN SHORT HAND SPECIALLY FOR THE PENNSYLVANIAN,

BY JAMES B. SHERIDAN,

PHONOGRAPHIC REPORTER.

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DISTRICT COURT OF THE UNITED STATES,

EASTERN DISTRICT OF PENNSYLVANIA.

UNITED STATES OF AMERICA

vs.

HENRY HERTZ AND EMANUEL C. PERKINS.

September 21st, 1855.—Before the HONORABLE JOHN K. KANE.

The Defendants were arraigned on several Bills of Indictment, to which they severally pleaded NOT GUILTY.

A JURY is called, and sworn or affirmed as follows:

1. JEREMIAH BYERLY, Carpenter, Front Street, below Catherine, Philadelphia.
2. JOHN BAIRD, Marble Mason, Spring Garden Street, above 13th, "
3. JOSHUA FRY, Gentleman, Centre P. O., Lehigh County, Penna.
4. JOHN G. HENSELL, Collector, Crown Street, above Vine, Philadelphia.
5. MICHAEL D. KELLY, Tailor, Division Street, below 12th, Philadelphia.
6. CORNELIUS McCAULEY, Manufacturer, No. 119 Lombard Street, Philada.
7. JOHN F. PARKE, Farmer, Radnor P. O., Delaware County, Penna.
8. GEORGE REESE, Gentleman, Race Street, above Third, Philadelphia.
9. JOHN STEWART, Farmer, Carlisle, Cumberland County, Pa.
10. JOHN WILBANK, Innkeeper, Rugan Street, above Callowhill Street, Philada.
11. JOSEPH LIPPENCOTT, Carpenter, Vernon Street, above 10th, Philada.
12. CHARLES R. ABLE, Manufacturer, No. 478 North Fourth Street, Philada.

The Indictments were similar in their character, and related to the hiring of different persons.

The following is a copy of one of the Indictments.

In the District Court of the United States in and for the Eastern District of Pennsylvania, of May Sessions, in the year of our Lord One Thousand Eight Hundred and Fifty-five.

Eastern District of Pennsylvania, *ss.*

FIRST COUNT.—The Grand Inquest of the United States of America, inquiring for the Eastern District of Pennsylvania, upon their oaths and affirmations respectively, do present, that HENRY HERTZ, late of the District aforesaid, yeoman, and EMANUEL C. PERKINS, late of the District aforesaid, yeoman, heretofore, to wit: on the twentieth day of February, in the year of our Lord one thousand eight hundred and fifty-five, in the District aforesaid, and within the jurisdiction of this Court, with force and arms, *did hire and retain one* WILLIAM BUDD, *to enlist himself as a soldier, in the service of a foreign Prince*, State, Colony, District and People, contrary to the form of the Act of Congress in such case made and provided, and against the peace and dignity of the United States.

SECOND COUNT.—The Grand Inquest of the United States of America, inquiring for the Eastern District of Pennsylvania, upon their oaths and affirmations respectively, do further present, that HENRY HERTZ, late of the District aforesaid, yeoman, and EMANUEL C. PERKINS, late of the District aforesaid, yeoman, heretofore, to wit: on the twentieth day of February, in the year of our Lord one thousand eight hundred and fifty-five, at the District aforesaid, and within the territory and jurisdiction of the United States, and of this Honorable Court, with force and arms, *did hire and retain* WILLIAM BUDD, *to enlist and enter himself as a soldier in the service of a foreign Prince*, State, Colony, District and People, to wit: *the service of Her Most Gracious Majesty, the Queen of Great Britain and Ireland*, contrary to the form of the Act of Congress in such case made and provided, and against the peace and dignity of the United States of America.

THIRD COUNT.—The Grand Inquest of the United States of America, inquiring for the Eastern District of Pennsylvania, upon their oaths and affirmations respectively do further present, that HENRY HERTZ, late of the District aforesaid, yeoman, and EMANUEL C. PERKINS, late of the District aforesaid, yeoman, heretofore, to wit: on the twentieth day of February, in the year of our Lord one thousand eight hundred and fifty-five, at the District aforesaid, within the territory and jurisdiction of the United States, and within the jurisdiction of this Court, with force and arms, *did hire and retain* WILLIAM BUDD, *to go beyond the limits and jurisdiction of the United States, with the intent of him, the said* WILLIAM BUDD, *to be enlisted and entered as a soldier, in the service of a foreign Prince*, State, Colony, District and People, contrary to the form of the Act of Congress in such case made and provided, and against the peace and dignity of the United States of America.

FOURTH COUNT.—The Grand Inquest of the United States of America, inquiring for the Eastern District of Pennsylvania, upon their oaths and affirmations respectively, do further present, that HENRY HERTZ, late of said District, yeoman, and EMANUEL C. PERKINS, late of the District aforesaid, yeoman, heretofore, to wit: on the twentieth day of February, in the year of our Lord one thousand eight hundred and fifty-five, at the District aforesaid, and within the territory and jurisdiction of the United States, and within the jurisdiction of this Honorable Court, with force and arms, *did hire and retain* WILLIAM BUDD, *to go beyond the limits and jurisdiction of the United States, with the intent of him, the said* WILLIAM BUDD, *to be enlisted and entered as a soldier, in the service of a foreign Prince, State, Colony, District and People*, to wit: the service of Her Most Gracious Majesty, the Queen of Great Britain and Ireland, contrary to the form

of the Act of Congress in such case made and provided, and against the peace and dignity of the United States of America.

FIFTH COUNT.—The Grand Inquest of the United States of America, inquiring for the Eastern District of Pennsylvania, upon their oaths and affirmations respectively, do further present, that HENRY HERTZ, late of said District, yeoman, and EMANUEL C. PERKINS, late of the District aforesaid, yeoman, heretofore, to wit: on the twentieth day of February, in the year of our Lord one thousand eight hundred and fifty-five, at the District aforesaid, within the territory and jurisdiction of the United States, and within the jurisdiction of this Court, with force and arms, *did hire and retain* WILLIAM BUDD, *to go beyond the limits and jurisdiction of the United States, with the intent of him, the said* WILLIAM BUDD, *to be enlisted and entered as a soldier in the service of a foreign Prince, State, Colony, District and People.* The said HENRY HERTZ and EMANUEL C. PERKINS, at the time they so hired and retained the said WILLIAM BUDD to go beyond the limits and jurisdiction of the United States, with the intent as aforesaid, *not being a subject or citizen of any foreign Prince, State, Colony, District or People, transiently within the United States, and said hiring and retaining not being on board any vessel of war, letter of marque, or privateer, which at the time of the arrival within the United States, of such vessel of war, letter of marque, or privateer, was fitted and equipped as such, and the said* WILLIAM BUDD, *so hired and retained, not being a subject or citizen of the same foreign Prince, State, Colony, District and People, transiently within the United States,* enlisting and entering himself to serve such foreign Prince, State, Colony, District or People, on board such vessel of war, letter of marque, or privateer, the United States being at peace with such foreign Prince, State, Colony, District and People, contrary to the form of the Act of Congress in such case made and provided, and against the peace and dignity of the United States of America.

SIXTH COUNT.—The Grand Inquest of the United States of America, inquiring for the Eastern District of Pennsylvania, upon their oaths and affirmations, do present that HENRY HERTZ, late of said District, yeoman, and EMANUEL C. PERKINS, late of the District aforesaid, yeoman, heretofore to wit: on the twentieth day February, in the year of our Lord one thousand eight hundred and fifty-five, at the District aforesaid, and within the territory and jurisdiction of the United States, and within the jurisdiction of this Honorable Court, with force and arms, *did hire and retain* WILLIAM BUDD, *to go beyond the limits and jurisdiction of the United States, with intent of him the said* WILLIAM BUDD, *to be enlisted and entered as a soldier in the service of a foreign Prince,* State, Colony, District and People, to wit: *in the service of Her Most Gracious Majesty, the Queen of Great Britain and Ireland.* The said HENRY HERTZ and EMANUEL C. PERKINS, at the time they so hired and retained the said WILLIAM BUDD, to go beyond the limits and jurisdiction of the United States, with the intent as aforesaid, *not being a subject or citizen of the said Queen of Great Britain, transiently within the United States, and said hiring and retaining not being on board any vessel of war, letter of marque, or privateer, which at the time of its arrival within the United States, was fitted and equipped as such, and the said* WILLIAM BUDD so hired and retained, *not being a subject or citizen of Her Most Gracious Majesty, the Queen of Great Britain and Ireland, transiently within the United States,* enlisting and entering himself to serve the said Queen of Great Britain, on board such vessel of war, letter of marque, or privateer, *the United States being at peace with the said Her Most Gracious Majesty, the Queen of Great Britain and Ireland,* contrary to the form of the Act of Congress in such case made and provided, and against the peace and dignity of the United States of America.

JAMES C. VAN DYKE,

Attorney for the United States for the Eastern District of Pennsylvania.

J. C. Van Dyke, Esq., Attorney for the United States opened the case on the part of the prosecution, in substance, as follows:

May it please the Court—Gentlemen of the Jury: It is a fact which will be judicially noticed by this Court and Jury, that during the year 1855, as for some time previous, the Crimea has been the site of a sanguinary and melancholy conflict between some of the most powerful nations of the globe.

That conflict has been conducted principally by the British, French and Turks on one side, and by Russia on the other, and has become part of the political and legal history of nations.

It is not important for us to inquire into the cause of this conflict, nor is it necessary for us to trace the various military or political manœuvres by which it has been conducted, much less to endeavor to ascertain or speculate as to the probable result of an attack on the part of the Allies, producing those misfortunes to the British government which they have endeavored to retrieve by a violation of law in this country.

We do not deem it in any degree important to the American people that the combined forces of Southern Europe should be successful against a single nation of the North, in maintaining her asserted rights. In this free and republican country, the home ordained by Providence for the oppressed of all nations, we have very little to do with the struggles for supremacy and power by the different crowned heads of the Old World. The various schemes which have been adopted for the support of a balance of power by the potentates of Europe, never has, and I am of opinion never will advance those republican institutions which it is our pleasure and duty to foster. On the contrary, those combinations which have been formed in support of such balance, has at all times been made the instrument of retarding in Europe the progressive Democratic spirit of the age, and of binding the masses more firmly beneath the yoke of an overgrown and decaying aristocracy; and although the popular pulse in this country is manifestly against all war which originates in the desire to perpetuate or extend any other than a republican form of government, yet a proper regard for our national integrity forbids us to tolerate on the part of those residing amongst us, any intermeddling in the disputes of other nations, where those disputes do not interfere with, or concern the legitimate objects, and manifest destiny of our own wide-spreading institutions. Except in such cases our policy is peace, and we should endeavor to keep ourselves free from all political connections which might in any way involve us in the conflict amongst European powers—not so much for the reason, that we are not ever ready to defend our rights by an effectual resort to arms, but because our implied and treaty obligations require us firmly and faithfully to maintain an impartial neutrality.

By prudence and an entire good faith in observing the position of an independent neutral nation, we increase our own happiness and prosperity at home, and secure to ourselves the right to demand a proper respect abroad.

A neutral nation cannot, with propriety, interfere with any matter of dispute between foreign belligerant parties, nor can it furnish aid to either, without justly incurring the danger of the displeasure of the other. The propriety of a nation not directly involved in an existing war, in maintaining this position of strict impartiality is manifest. It is protection and perservation both to our citizens and our property.

This has been the doctrine of all neutral powers; and although for centuries disregarded by European governments, in violation not only of the well settled laws of

nations, but also of highly penal statutes, it has ever been regarded by American Statesmen as a cardinal element in American diplomacy.

The benefits of a strict observance of neutrality are too great and too many to be enumerated in the trial of the issue which I am about to present to you. Suffice it to remark, that so great are those benefits, that from the beginning of our government we have considered it the duty of every resident in this country, whether Minister Plenipotentiary, Consul, or private citizen, to enquire the character and extent of our laws upon this subject, and carefully to observe them.

No one residing here has a right to violate the national sovereignty of the United States, by setting those laws at defiance, by the perpetration of acts derogatory to our character as an independent impartial neutral nation; and any neglect of this duty renders him amenable to the laws of the land. As an example of the early feeling of our government upon this subject, Mr. V. read the Proclamation of President Washington, in 1793, in relation to "the war then existing between Austria, Prussia, Sardinia, Great Britain, and the Netherlands, on the one part, and France on the other, stating that the duty and interest of the United States require that they should, with sincerity and good faith, adopt and pursue a conduct friendly and impartial toward the belligerant powers.

"I have therefore thought fit, by these presents, to declare the disposition of the United States to observe the conduct aforesaid, toward those powers respectively and to exhort and to warn the citizens of the United States carefully to avoid all acts and proceedings whatsoever, which may tend in any manner to contravene such disposition.

And I do hereby, also, make known that whosoever of the citizens of the United States shall render himself liable to punishment, or forfeiture by the laws of nations, by combatting, aiding, or abetting hostilities against any of the said powers, or by carrying to any of them those articles which are deemed contrabrand by the modern usage of nations, will not receive the protection of the United States against such punishment or forfeiture; and further, that I have given instructions to those officers to whom it belongs, to cause prosecutions to be instituted against all such persons who shall, within the cognizance of the Courts of the United States, violate the laws of nations, with respect to the powers at war, or any of them."

The justice of the principles contained and proclaimed in this message, no doubt produced, in 1794, the passage of the first law for the protection of our neutrality.

That act is the same in its principle features as the English statute 9 Geo. 2 ch. 30, sec. 2 and 29, ch. 17 sec. 2.

Mr. Van Dyke then referred to the various acts of Congress which had at different times been enacted for the purpose of imposing punishment upon those who should violate the national sovereignty of the United States, by interfering with the rights of belligerants.

The Act of June 5, 1794, *ch.* 50, punishes any citizens of the United States for accepting and exercising a commission to serve in any war, on land or at sea, in the service of any foreign prince or State, and prohibits any person within the territory or jurisdiction of the United States, enlisting or entering himself or hiring or retaining another person to enlist or enter himself, or to go beyond the limits or jurisdiction of the United States, with the intent to be enlisted or entered in the service of any foreign prince or state as a soldier, or as a mariner, or seaman, on board any vessel of war, letter of marque, or privateer, and forbids the fitting out or attempting the fitting out of ships of war within any of the waters of the United States, or procuring the same to be done. This act also forbids any person within the territory of the United States, increasing

or augmenting, or procuring the increase or augmentation, or knowingly being concerned therein, of the force of any ship-of-war, cruiser or other armed vessel of any foreign prince or State, or belonging to the subject of any foreign prince or State, the same being at war with any other foreign prince or State with whom the United States are at peace.

Sec. 5. Prohibits all persons within the territory or jurisdiction of the United States *to begin or set on foot, or provide or prepare the means for any military expedition* or enterprise, to be carried on from thence against the territory or dominions of any foreign prince or State with whom the United States are at peace.

Sec. 6. Makes the offence indictable in the District Court of the United States.

Sec. 7. Authorizes the President of the United States to employ the armed forces of the United States to prevent the commission of the offences declared against by the neutrality laws of the United States.

Sec. 8. Authorizes the President to use the armed forces of the United States to compel the departure of any armed ship of any foreign prince, in all cases, in which by the laws of nations or the treaties of the United States, they ought not to remain in the United States.

This Act was to continue in force for 2 years, or until the next Congress thereafter. In 1797 the act was further extended for the period of 2 years.

On the 24th April, 1800, Congress, by an enactment, made the act of 1794 *perpetual.*

The next enactment was March 3, 1817, ch. 58 by which new punishment and penalties were imposed for a violation of the provisions of the act of 1794.

Mr. V. said he referred only to the substance of these Acts of Congress, without delaying the court to read from the books, because having been repealed by the law under which the present bills of indictment are framed, they are important for two reasons only.

1. They show in a most conclusive manner the policy of *our Government* in maintaining a strict neutrality on the *international* affairs of European powers.

"Peace with all Nations, entangling alliances with none"—has ever been the *motto*, not only of the Government but of the people of this country.

By adopting and strictly observing this just and fair policy, the United States has in times of intense political excitement, and bloody and disastrous warfare in other countries, cultivated peace with all nations, and secured at all times national repose and commercial prosperity at home, and respect abroad. By fulfilling with a strict impartiality our neutral responsibilities towards belligerant powers, we have in times past avoided the disasters which have befallen other free Governments, and by continuing so to do in the future, we will continue able to present to mankind an example of republican integrity worthy of imitation by the civilized world.

2. *They are important*—Because from their peculiar similarity with the act of 1818, under which these defendants, now on trial, are indicted, we are enabled more fully to comprehend the meaning of the several judicial constructions which have been given to them, especially in cases of PRIZE, and to ascertain the bearing of such construction upon the act of 1818.

In 1818, the Congress of the United States, felt the importance of remodeling the law upon the subject of American interference in disputes between foreign nations, and in an act passed on 20th April, which repeals all former laws upon the subject, adopted a most wholesome law, which though varying somewhat from former enactments is the same in all essential points. Mr. Van Dyke referred to this act at length.

The defendants are indicted under the provisions of the second section of this act. The Grand Jury have found several bills of indictment against them for the various violations of this law, which seemed to them susceptible of the most easy proof.

It will be observed that the crime mentioned in this section consists in the doing of various acts. You will be instructed by the Court that you must be satisfied of certain propositions which it will be my duty to submit to your consideration.

First. It will be necessary for the Government to satisfy you that the act complained of was committed within the territory of the United States.

Second. That the defendants, or either of them, enlisted or entered himself respectively, in the service of a foreign prince, state, colony, district or people, as a soldier, or as a mariner or seaman on board any vessel of war, letter of marque, or privateer.

Third. That the defendants, or either of them, hired or retained another person to enlist or enter himself in such service.

Fourth. That the defendants, or either of them, hired or retained another person to go beyond the limits or jurisdiction of the United States, with the intent to be enlisted or entered in such services.

Upon the first point, I remark, that if from the evidence you are satisfied that the acts complained of were not committed within the limits of the United States, and also within the limits of the jurisdiction of this Court, which is bounded by those counties, forming the Eastern District of Pennsylvania, it will be your duty to acquit both the defendants on all the bills now laid before you.

Upon this point, however, gentlemen, I think you will have no trouble. The evidence will be conclusive that whatever was done by the defendants was done within the Eastern District of Pennsylvania.

Upon the second point, you are relieved from any inquiry, there being no charge in the indictments that the defendants, or either of them, enlisted himself in any foreign services.

Having found, however, the first point in favor of the Government, your investigations will be directed to the *third* and *fourth* points of inquiry, viz: Did the defendants, or either of them, at the various times specified in the various bills under consideration, hire or retain any or all of the persons mentioned to be enlisted or entered in a foreign service, or did they hire or retain any or all of the persons mentioned in these bills to go beyond the limits of the United States, with the intent to be enlisted or entered in such foreign service. If either, or both, then you will find them, or either of them, guilty on such counts in the indictments as are applicable to the facts upon which you base your conclusions.

The Court, I am of opinion, will inform you that the intent mentioned in the act refers to the intention of the party enlisted, hired or retained. Not that such an intent must be an absolute determination to enlist when arriving beyond the limits of the United States—but the crime charged against the defendants being the hiring of some other person, which other persons must have the intent, it is sufficient ground for conviction, if, from all the testimony, you are satisfied that the defendants at the time they so hired or retained any other person, believed it to be the bona fide intention of the person so hired or retained, to enlist or enter such foreign service when he should arrive beyond the limits of United States. Upon this point, however, gentlemen, you will have no difficulty upon many of the bills, as I shall be able to prove to our entire satisfaction first, that the defendant Hertz thought the recruit had

such intention; and secondly, that the recruit, did, in fact, agree to depart from our jurisdiction with intent to enlist.

Having thus briefly reviewed the political policy of our Government, and the law applicable to the present prosecution, permit me to call your attention to the facts as I shall be able to present them to your serious consideration. So far as applicable to the prosecution, they are easily understood.

I have said that the war in the Crimea was conducted by the British, French, and other nations, as allies, against the single power of Russia. I have said that the consequences of that war had been disastrous to the besieging parties, and that the signs of the times indicated a still more humiliating fate. The English army having met the most serious lossss, the Government of Great Britain, in direct violation of her duty towards us, and with a design of misleading those residents of the United States who did not fully comprehend the nature of our laws, devised a plan for the purpose of partially regaining the position and standing which, in the absence of the proper exercise of the advanced military experience of the age, they had lost.

A plan for this purpose was adopted and attempted to be carried out, by His Excellency John J. Crampton, the Minister Plenipotentiary of Her Majesty, assisted by several agents of the British Government, within the territory and jurisdiction of the United States; and, I think, you will be satisfied that Mr. Crampton thus acted, with the knowledge and approbation of his Government. This high functionary of that Government made contracts and agreements with certain persons, known in this country as able and efficient officers in the various conflicts which have recently taken place on the continent of Europe. The parties thus contracted with were to commence a system of recruiting men within our territorial limits.

There will be examined before you two or three individuals who were engaged in carrying out this plan, and who, on various occasions, had interviews with Mr. Crampton, and with him adjusted and perfected the programme for this enlistment. Mr. Howe, Sir Gaspard Le Marchant, Governor of Nova Scotia, Mr. Wilkins, his Secretary, Mr. Barclay, the British Consul at New York, and other British representatives in power, also assisted in and directed this flagrant violation of our law.

In the perfecting of this general design, Mr. Howe came to Philadelphia and endeavored to make an arrangement with Colonel Rumberg, well known here for many years as one of the publishers of the *German Democrat*—and now known as one of the editors of the *German Adopted American*, published in Philadelphia and Pottsville. Mr. Howe brought to this gentleman a proclamation, which will be submitted to you, calling for enlistments within the United States to serve in the Foreign Legion, then forming at Halifax. Colonel Rumberg was at first pleased with the proposition, and felt disposed to lend his aid in its furtherance, but afterwards, upon being informed that such enlistments were a violation of the laws of the United States, and that he might get into difficulties, he abandoned it.

He, however, translated the proclamation for Mr. Howe, and having met Mr. Hertz and Mr. Howe together at Jones' Hotel, he published the proclamation in his paper for Mr. Hertz.

Arrangements were made by Mr. Howe and Mr. Crampton with the defendant Hertz, who, for them, undertook the enlistment of men at his office, which he opened for that purpose, at 68 South Third street. Mr. Hertz published and paid for the proclamation for these recruits in various newspapers. That proclamation was signed by Lewis M. Wilkins, Secretary of the Provincial Government of Nova Scotia, and calls upon persons to enlist in the Foreign Legion.

While this matter was going on, Captain Strobel was either sent for by Mr. Crampton, or came himself to him; I do not recollect which—and entered into negotiations with him for carrying on this business. Mr. Crampton told Strobel that he had written to his Home Government for the purpose of learning what arrangements should be made in this country for enlisting soldiers, and had not yet received a reply; but as soon as he received it he would let him know. A short time afterwards, he wrote him a note, informing him that he had received the reply, and was prepared to enter into the proper arrangements for carrying on the enlistment. They met together, and Mr. Strobel prepared for him a plan which he had devised for the purpose of recruiting men in the United States, and taking them beyond our borders to serve in the "Legion." The plan, with some alterations, was adopted by Mr. Crampton, and Mr. Strobel was sent through the large cities of the United States to establish various recruiting offices. I give the most prominent facts, merely running over them as briefly as possible. After having first gone to New York, he came to Philadelphia and met Mr. Hertz, who was then engaged enlisting men in this city, and who had a number already enlisted. Mr. Hertz had, up to the 24th of March, one hundred men, which Mr. Strobel was to take to Halifax; and on the 25th of March they sailed in the steamer Delaware bound for that place. These men were enlisted at Hertz's office, No. 68 South Third street, whither the advertisements had called them. Mr. Strobel saw them there enlisted, and to a certain extent assisted in enlisting them; and on Sunday, the 25th of March, he sailed in the steamer Delaware with about seventy-five men, the rest having deserted between the time of hiring, or engagement, and the time of sailing. These men were taken to Halifax by Captain Strobel, and there examined and attested; were placed in the barracks, and a short time afterwards sailed for Portsmouth, England. On the following Wednesday, Mr. Hertz had made an arrangement to send another company of recruits from the United States, in charge of a person named William Budd, a very intelligent and good officer, whom he had also engaged to go beyond the limits of the United States, with the intent of entering into the British service. The officers of the United States having learned that this recruiting was going on, devised, in pursuance of directions from the Administration at Washington, the means for stopping it; and after Mr. Budd, with his company, had embarked from Pine street, on board the steamer Sanford, being furnished by Mr. Hertz with free tickets for a passage to New York, where they were to get others from Mr. Howe, to take them the rest of the journey, and had progressed as far as the Navy Yard, the U. S. Marshal, having a warrant, went on board and arrested the whole company and brought them to Philadelphia, where the parties who had assisted them, together with the papers in their office, were taken in charge.

That Mr. Hertz was engaged in willfully violating the law is proved by several circumstances connected with the case. He had the proclamation, in the shape of a handbill, printed and posted in the streets of Philadelphia, and paid for publishing the proclamation in the *Ledger* and *Pennsylvanian*. He took an advertisement to the German *Democrat*, which called for recruits for the Foreign Legion, and had an office opened, and individuals there to assist him in taking down the names of those who applied, and examining them to see if they would be received. He there told them that they would get thirty dollars bounty and eight dollars a month, and also stated that various persons would receive commissions. He also gave them tickets for their passage to New York, some of which tickets were taken from those arrested, and will be produced. During the whole of his enlistment, the defendant, Hertz, was actively engaged in procuring men for that purpose.

Arrests having been made in all parts of the United States of persons engaged in this business, the representatives of Her Majesty in this country became somewhat alarmed as to the results. Mr. Crampton then made arrangements with Mr. Strobel and one Dr. Ruess, who met him at Halifax, and devised plans as to the manner in which the recruiting was thereafter to be conducted in the United States, and on the 15th May, or thereabouts, the whole programme of proceedings was changed by his Excellency, the British Minister and Sir Gaspard Le Marchant, Governor of Nova Scotia. They then devised a new plan of violating the national sovereignty of the United States, and of evading our laws enforcing neutrality—not a very praiseworthy occupation within the borders of a friendly government, for the dignified representative of the self-styled mistress of the seas; but it was an occupation which, if permitted by our people, might have destroyed the most amicable and friendly relations which exists, and which I trust may ever continue between the United States and the Russian government. Mr. Crampton, and his associate representatives of Great Britain on this continent, gave directions to Captain Strobel to repair immediately to all the recruiting offices in the United States, and order the persons engaged in those offices to adopt the system which they had prepared for the guidance of the recruiting agents; giving to these agents at the same time, a caution, that should they be unsuccessful in evading the laws, and eluding the authorities of the United States, they could hope for no protection from the British government—that is, the British government was willing to accept the advantage of the successful criminal conduct of all their minister and his recruiting agents, but refuse to defend or assist those agents if they should be so unfortunate as to be detected. Honorable and generous Great Britain! and oh! most faithful British Ministers!!

The ruse then adopted was to send men to Canada and Halifax, under the pretence of engaging them on the railroad, and when there, to enlist them in the army. For the purpose of carrying out this object, regular written instructions were given by Mr. Crampton to Mr. Strobel, who, with Dr. Ruess and other officers, started in company with Mr. Crampton to the United States. Some of these officers afterwards left the service of Her Majesty, and as was their duty, have since expressed their willingness to disclose all their knowledge in support of the prosecutions which have been commenced.

The active connection and co-operation of nearly all the Representatives of Her Majesty in this general design, will be made clear to you by unimpeached testimony. I think I can say with confidence that His Excellency John F. Crampton, Minister Extraordinary, &c.; His Excellency Sir Gaspard Le Marchant, Governor of Nova Scotia; His Excellency Sir Edmund Head, Governor of Canada; Sir Joshua Howe; Lewis M. Wilkins, Provincial Secretary of Nova Scotia, and at least one British Consul directed this course of conduct. All these gentlemen, it will be in evidence to you, have, with Mr. Hertz, the defendant, taken an active part in directing the commission of the crime charged; and whether or not by a bold attempt to disguise their real object, is a matter of very little importance.

The oral testimony of the witnesses will in some most material and important facts, be corroborated by written documents. I shall be able to produce to you some five or six original letters and notes of Mr. Crampton, and also the original instructions to the agents, as to the mode in which the enlistments were to be conducted in the United States. You will also have in evidence the original proclamation or advertisement in the hand writing of Sir Joseph Howe, inviting persons to enlist in the Foreign Legion, as well as several other letters and papers of considerable importance on the points in issue.

I take it, gentlemen, briefly to conclude what I have to say to you at this stage of the proceedings, that if I show that either or both of these defendants, in conformity with this general design of the British Government, were engaged in thus enlisting or hiring or retaining any person to be enlisted—I have made out a clear case. I am free to admit, that the evidence against one of the defendants is not of the most conclusive character, he not being known as being positively engaged in enlisting, hiring or retaining any particular person, although he was in talking and giving directions on the subject. The Court will instruct you how far a person must go in order to commit this crime, and whether the fact of Perkins sending a man to Hertz, for Hertz to enlist him, constituted a crime on the part of Perkins.

I shall prove to you distinctly, by unimpeachable evidence, that all the persons mentioned in all of these bills have been enlisted by the defendant Hertz, in the first place in the service of Her Most Gracious Majesty, the Queen of Great Britain, and if not enlisted within the jurisdiction of the United States, that he has hired and retained each and every one of these individuals and many more, to go beyond that jurisdiction; to wit, to Halifax, in Nova Scotia, for the purpose of being there enlisted in a foreign legion destined for the Crimea, to engage in the battles of the Allies. If I prove these facts, I can safely ask at your hands a verdict against him for one of the most flagrant violations of the national sovereignty of this country which has ever been known to have been perpetrated within its borders. First, a violation of our law; second, a violation of the confidence reposed in a high representative functionary, and thirdly, a violation of the sympathies, and a national insult to the sentiments and the feelings of our people.

MAX F. O. STROBEL, sworn.

After the witness was sworn, Mr. Remak desired the District Attorney to state distinctly what he intended to prove by him?

Mr. Van Dyke said he had one objection to doing so, but he thought it would occupy too much time.

Judge Kane said that he preferred that the witness should be examined in the first instance, without being distinctly apprised of all the facts about which he was to testify.

Examination by Mr. Van Dyke—Q. Of what country are you?

A. I am from Bavaria.

Q. Have you been in military service?

A. Yes, sir, in the Bavarian service, in the artillery.

Q. Have you ever been in war?

A. Yes, sir, I have joined the Revolutionists in Bavaria.

Q. In 1848? A. During the Revolution in the year 1849.

Q. How did you happen to leave the service?

A. Well, we were defeated and obliged to leave Baden and go into Switzerland, then I stopped there and traveled through France and England until 1851. On the 13th of May, 1851, I embarked at Havre and came to this country, and arrived here in June, 1851. On the 23d of June, 1851, I came to this country; I was in New York several weeks, and then went to Washington, and there got employment in the Coast Survey Office. I was there until 1853, when I went out with the expedition to Oregon, under Governor Stevens. I went up with him to Minesota; I left his party out on the plains on Red River, and came back to Minesota on the 7th of September,

1853, and came down to St. Louis, and started with Col. Fremont on his winter expedition to San Francisco about this Great Pacific Railroad; I have been Assistant Typographical Engineer of Col. Fremont; I left San Francisco on the first of May, 1854; I crossed the Isthmus and came back with our Indians, and brought them up to Kansas again. From there I went back to Washington city, where I finished the maps for the works of Col. Fremont, which I suppose are now before Congress.

Q. When did you finish the maps?

A. I finished them in the end of August, 1854. I then received a letter of recommendation from Mr. Benton to the different directors of railroads to secure me a position as engineer. I went with this recommendation or letter of introduction to Missouri. I took sick there and was obliged to leave the valley of the Mississippi and come back to Washington city. When I came back to Washington I was engaged in the Pacific railroad office, at that time established in Washington, and was at work there until the first of February. In the end of January, I saw Mr. Crampton and received from Mr. Crampton the reply.

Q. State the whole conversation which took place between you and Crampton.

A. I received from Crampton the reply that he could not tell me at that moment what could be done. I said to Crampton that I believed in this very time, as it was in the winter time.

Q. Last winter?

A. Yes, sir, that many people were out of work in New York and other places, and it would be very easy to raise men for this "foreign legion" that the English Parliament had agreed to establish. Crampton told me that he believed so himself, but at that moment he had no orders from the home government to do anything in the matter, and that he would let me know as soon as he received any communication from home. A few days afterwards, I suppose on the 28th of February, I received a letter from Mr. Crampton.

Q. Is this the letter? A. Yes, sir.

Q. And this the envelope in which it was enclosed? A. Yes, sir.

The letter was here read in evidence as follows:

"WASHINGTON, Feb. 4, 1855.

SIR—With reference to our late conversation, I am now able to give you more precise information in regard to the subject to which it related. I remain, sir, your obedient servant,

Mr. Max Strobel. JOHN F. CRAMPTON."

After receiving this letter I went to see Mr. Crampton the next morning; Mr. Crampton told me that he had received letters from home, and that he was willing now to raise men here in the jurisdiction of the United States for a British Foreign Legion which should be established either in Nova Scotia or in Canada.

Q. Did he use the words "within the jurisdiction of the United States?"

A. Yes, within the jurisdiction of the United States.

Q. He used those precise words, did he!

A. Yes, sir; but he was not sure at that time whether the main depot should be at Halifax or in Canada, and he was obliged to make arrangements with the Governor General of Canada. At the very same time he gave me a letter of introduction to the British Consul in New York, Mr. Barclay, in which he states, that I am already ac-

quainted with this matter, and that Mr. Barclay might receive me and talk with me about this subject, and that I should make preparations in New York, for getting men. He told me at the very same time he would send a messenger to the Governor General of Canada. I went to New York and delivered my letter to Mr. Barclay.

Q. What was this messenger sent for?

A. To arrange matters about a Depot or place where we could send these men whom we got here in the States. I was waiting in New York for the return of this messenger for several weeks. The messenger returned and was sent again, and no understanding could be made between Sir Edmund Head and Mr. Crampton. Head is Governor General of Canada; because during that time the Governor of Nova Scotia had received orders from England to commence a new depot in Halifax, and to try and get men in the United States for this service.

Q. The arrrangement was not made by the messenger sent to Canada to Sir Edmund Head, because he had received a letter from the Governor of Nova Scotia, stating that he had received orders from England to make Halifax the depot?

A. Yes, sir. The reason for sending all the men to Halifax, was the order that the Governor of Nova Scotia received from England. During that time I went back to Philadelphia. It was on the 10th or 11th of March, 1855, when I came back to Philadelphia. I learned from a friend of mine, a certain Dr. Biell, who is now regimental surgeon in this foreign legion, that Mr. Hertz had received letters—one from England, another one from Mr. Crampton, though I do not know positively, I am not certain where it was from, and that he had spoken to this Dr. Biell, and told him he was able to procure him a commission in this foreign legion.

Q. In consequence of what Dr. Biell told you, state what you did?

A. I went to Hertz and had a conversation with Hertz about this matter.

Q. Where was he?

A. He was in his office, No. 68 South Third street, opposite the Exchange. I saw then Mr. Hertz, and from that time (9 o'clock, A. M.) I was with Mr. Hertz till 3 P. M., where, in pursuance of the advertisements, men came and wrote their names down on a book, and agreed to enter the foreign legion at Halifax.

Q. Have you ever seen a bill like this? A. I have seen this handbill.

Q. Where? A. In Mr. Hertz's office.

The bill was here read in evidence. It reads as follows:

"MEN WANTED FOR HER MAJESTY'S SERVICE.

(Arms of Great Britain, with mottos.)

Provincial Secretary's Office,
Halifax, Nova Scotia, March 15, 1855.

The Lieutenant Governor of Nova Scotia having been employed to embody a Foreign Legion, and to raise British Regiments for service in the Provinces or abroad, notice is hereby given, that all able-bodied men, between the ages of 19 and 40, on applying at the depot at Halifax, will receive a bounty of £6 sterling, equal to $30, and on being enrolled will receive $8 per month, with the clothing, quarters, and other advantages to which British soldiers are entitled.

Preference will be given to men who have already seen service.

The period of enlistment will be from 3 to 5 years, at the option of the British Government.

Officers who have served will be eligible for commissions. Gentlemen who wish to come into the Province will please lodge their names, rank, date of service, &c., at the office.

Persons who serve in the Foreign Legion will, on the expiration of their term, be entitled to a free passage to America, or to the country of their birth.

Pensions or gratuities, for distinguished services in the field, will be given.

Nova Scotian and other shipmasters, who may bring into this Province poor men, willing to serve Her Majesty, will be entitled to receive the cost of a passage for each man shipped from Philadelphia, New York, or Boston.

By command,

LEWIS M. WILKINS,

Provincial Secretary."

Q. (Another bill here shown the witness)—Have you ever seen this bill?

A. I have, in Detroit.

The bill was here read in evidence. It read as follows:

"NOTICE.

A Foreign Legion is now being raised in Halifax, Nova Scotia. Persons wishing to join the Legion will receive a

BOUNTY

Of £6 Sterling, or 30 Dollars.

From which a reduction of $5 for traveling expenses to Nova Scotia, will be made. Besides good rations and quarters, men will receive $8 a month as pay.

The Period of Enlistment is Three or Five Years, at the option of the applicant.

For extraordinary service in the field, or wounds, BOUNTIES and PENSIONS FOR LIFE will be granted. Besides which, there is now a project in view, and which will undoubtedly be carried out, to give to each soldier, at the expiration of his term of service 50 Acres, and to each non-commissioned officer 100 Acres of Land in Canada.

All who are inclined to enter the service under the foregoing very favorable conditions, are hereby invited to apply at Niagara City, Butler Barracks, or at the WINDSOR CASTLE, Windsor, C. W."

Q. (Another bill shown witness.) Did you ever see this bill?

A. Yes, sir; I had that printed in Detroit.

Mr. Van Dyke. It is a German bill?

Mr. Remak. The paper was printed to the order of the witness.

Judge Kane. The paper now presented is part of the general transaction which does not directly affect the person on trial. It is like the letter of Mr. Crampton which was read a short time ago, and is a portion of the general narrative.

Q. by Mr. Van Dyke. Is that a true translation attached to the German handbill?

A. Yes, sir.

The translation was here read in evidence. It read as follows:

"NOTICE.

In Halifax, Nova Scotia, a Foreign Legion will be formed. Every one who will enter into this Legion, which is for the most part composed of Germans, and has German officers, is entitled to a bounty of 6 pounds sterling, or $30, from which however, $5 for traveling expenses to Nova Scotia, will be taken off.

Moreover, every man will receive full and good maintenance, besides $8 a month pay.

The time of service is according to pleasure, 3 or 5 years.

For extraordinary services in the field, or wounds, bounties and pensions for the whole lifetime will be given. It is also truly in prospect, that every soldier, on the running out of his time of service, will obtain 50 acres, and every non-commissioned officer 100 acres of land in Canada, as his own property.

Every one who is disposed to fall in with these conditions, is hereby notified to repair to the Niagara Barrack, not far from Queenstown, Canada West, at the depot there established."

Q. You say you went to Mr. Hertz, and you saw the recruits sign the book there; look at that book and say if that is it? A. That is the book.

Q. Where did you see that book? A. At Mr. Hertz's office.

Q. Did you see any of the parties signing it?

A. Yes, sir, (looking at the book,) there is the handwriting of some men.

Q. Will you read me the names of the men you saw sign?

A. The names of the officers were cut out.

Q. Do you recollect the name of Joseph Purnell?

A. Yes, sir, I recollect the names of all the men in my company.

Q. Go on and state what you did after the men enlisted.

A. After we had more than 100 men, we gave them cards, and told them we would be ready to start on Sunday, the 25th of March, 1855, on the steamer Delaware, in the morning, for New York.

Q. What did you tell, or Hertz tell these men. If you told them anything, what was the understanding?

A. The understanding was that those men who signed this book——

Judge Kane—Was the understanding announced in the presence of Mr. Hertz?

Witness.—Yes, sir, in the presence of Mr. Hertz, the men were told that there was a foreign legion now established in Halifax, and that Mr. Hertz would send them to Halifax to the foreign legion to enlist in it—every man that is well, and able bodied and willing to enlist in this foreign legion, shall have a free passage and $30 bounty, and $8 a month pay, and the men who agreed to be attached to this foreign legion, signed this very book.

Q. Who said that they should sign that book?

A. Mr. Hertz; and they signed this book, with the understanding to go to Halifax and enlist in the foreign legion, and it was also told to those men that an officer should go in their company, and I was called Captain of those men before I started, and was introduced to them before we started as their Captain—I was to take that company. I recolleet Palattre and Purnell very well.

Mr. Van Dyke here asked the witness, whether he recollected the names of the various persons who composed his company, when he replied, that he remembered the following, besides some 60 more whose names he did not recollect.

F. P. Garrier, Jacob Branning, Fredrick Fuss, Hugh Killen, Fred. Ferdinand Bostandig, Emanual Urnhaut, Edward Rollnn, Carl Muhlenhausen, John Schæffold, Petrus Pauls, John Kœlomus, Jacob Blecher, Foley Worrell, Rudolph Chas. Ruth, Peter Ropert, Ed. Dobeller, Jacob Roth, Pierce Pelattre, Joseph Purnell, Gustav Prothe, Gunther Leopold Neisbaum, Wilhelm Heinrich, Karl Altenberg, Karl Barthold, Johann Baumiescer, F. Ulrich.

Q. Were all these persons in your company? A. Yes, sir.

Q. How many more went with you?

A. Well, I started from here with about 75 or 76 men, and two officers, Lieutenant Essen and Lieutenant Shuman, on this steamer Delaware to New York.

Q. When did you leave here?

A. On Sunday, the 25th of March, early in the morning, and arrived in New York on Monday morning about 5 o'clock.

Q. Well, sir, when you got in New York what did you do?

A. I came to New York in the morning at 5 o'clock, and left my men on board the boat as I was not furnished with means enough, as I had received only some money from Hertz. I had received tickets and $25 to go on to New York, and I was there to receive more money.

Q. Was that money given you for the purpose of taking this company on?

A. Certainly; and I was to receive further means in New York to take the men on to Halifax.

Q. When you got to New York what did you do?

A. I went to see Mr. Barclay, the British Consul, at New York, and when I got there, Mr. Barclay sent me to Delmonico's to see Mr. Howe. The Hon. Joseph Howe was at that time agent from the British Government in this recruiting business in the States. He was living at Delmonico's. I saw Mr. Bucknell, not Howe. He told me I should be furnished with means as early as possible before 10 o'clock; I had to divide the men in different taverns, and keep them together there for three days. At last I was furnished with tickets and means to start with these men for Boston, where an English brig, the America, was waiting there to receive us and take us on board to take us to Halifax. Mr. Hertz in the presence of Mr. Bucknell and Mr. Turnbull, told me this.

Q. How did Mr. Hertz get to New York, if you left him in Philadelphia when you sailed?

A. I traveled with the boat, and Mr. Hertz took the railroad. Mr. Howe or Bucknell was to be applied to, to let me have the necessary means to go on with the company. I received this money in New York, through Mr. Hertz at the beginning of the day, and before I started, some from Mr. Bucknell. I left New York on the Stonington road, and came to Boston. I arrived there about five o'clock in the morning with all the men, and found this brig, the America, ready to take us on board and bring us to Halifax. I embarked my men.

Q. Did you get this money from Hertz or Howe? A. No, sir, from Mr. Bucknell.

Q. Did you see Howe in New York?

A. I saw Howe in New York at the time, and received a letter from Mr. Howe to Sir Gaspard le Marchant. I told him that I had so many men in town, and wanted some money, and that I wanted tickets and a letter to Sir Gaspard le Marchant.

Q. The tickets you got in Philadelphia only carried you to New York on the steamer Delaware, then? A. Yes, sir.

Q And you went to Howe and told him you wanted tickets and a letter to the Governor and some money?

A. He gave me a letter, and Mr. Hertz and Bucknell gave me the money.

Q. Who was Bucknell? A. He was a Civil Engineer.

Q. Was he with Mr. Howe?

A. He was with Mr. Howe, but I do not know whether he was engaged by Howe only for the purposes of this business or not; I made the acquaintance of Bucknell only a few days before; I saw Mr. Hertz in New York at the time; Hertz told me I

was to go on as soon as possible; I was anxious to get the men away from New York, and he promised to see Howe and get money; he kept me twenty-four hours in trying to get money; he gave me the money, subsequently getting it from Howe; I embarked from pier B. in New York, and went on the Stonington road to Boston; I got there at 5 o'clock, and went around with all my men to the Tea wharf in Boston and found there the vessel which I was promised I would find.

Q. Who promised you?

A. Mr. Bucknell. When I came to this vessel it was in the morning, between 6 and 7. I embarked my men at once, I gave them breakfast, and started at half-past 8 o'clock for Halifax, and arrived there on the 30th of March. When I came to Halifax, the vessel went into a private wharf, and I was put on shore to report myself to the Provincial Secretary and Sir Gaspard le Marchant.

Q. Who was Provincial Secretary? A. Mr. Wilkins.

Q. Is he the man who signs this proclamation? A. Yes, sir.

Q. Lewis M. Wilkins? A. Yes, sir.

Q. When you got to the wharf you went on shore to report yourself to Wilkins?

A. I did so. The vessel was ordered to the royal wharf, and during that time I met some regimental surgeons and some officers of the 76th Regiment, some of the artillery. Afterwards Sir Gaspard le Marchant, Governor of Nova Scotia himself, came to the tea wharf.

Judge Kane.—The "tea wharf?"

Witness.—The "Queen's Wharf." He ordered me to file the company in, and show them; I did so, and Sir Gaspard le Marchant, with other officers, passed along by the men, and inspected the men; I introduced these two men, I had with me as Lieutenants—they were received by the officers, as officers; and I received an order from le Marchant, to march the men up to the Hospital, to have them examined and afterwards to march them out to Melville Island to have them attested. I marched them up to the Hospital, and they were there examined and two or three men rejected and one kept back, as sick. All the others I marched out to Melville Island. There they had the British barracks, and barracks erected for the foreign legion; there the men were attested. After the man is enlisted he has to be attested and sworn as a soldier.

Judge Kane—What is attesting?

Witness—There is a Judge comes to the quarters of the soldiers, and then the officer is there and the Judge swears the soldiers in; that is the act of attesting.

Q. What is the form of the oath?

A. The form of the oath is that we swear to serve Her Majesty, the Queen of England for a time, 3 or 5 years, or so many years as the soldiers agree upon; in this case the agreement was for 3 or 5 years, faithfully, and so on.

Q. That is the form of the oath?

A. Yes, sir, that is the oath they administered to each of those men.

Judge Kane—Is there any writing precedes it?

A. It is not in writing, it is a printed form; it is signed by the Judge, and afterwards by witnesses; I signed nearly all of them.

Q. Is it signed by the recruit?

A. Yes, sir, it is signed by the recruit; after the men had been attested, I commenced the drill, and bye-and-bye the men received clothing and arms; I was at Melville Island, at the officers' quarters, with the two other officers and Dr. Biell,

until the 10th of May; I was entered on the army list, as was the other officers, and we received our pay and were treated as officers; on the 9th or 11th of May, Mr. Crampton himself came up to Halifax, in order to make better arrangements about this recruiting business, as many men had been arrested in the States and kept back; on the 13th of May I received a letter from Lieutenant Preston of the 76th.

Q. (Letter shown witness.) Do you recollect this paper?

A. That is the letter of Mr. Preston, in Halifax, when he told me that Mr. Crampton wanted to see me.

Q. Who is Mr. Preston?

A. Mr. Preston is Lieutenant in the 76th Regiment—the officer who has charge of the barracks in Niagara.

The note was read as follows:

"DEAR STROBEL—I am directed by the General to acquaint you, that Mr. Crampton wants to see you at his house, at 10 o'clock, to-morrow morning—be punctual. If you like, come up to my house at half past 9 o'clock, and we will go together. Yours Truly,

J. W. PRESTON, 76th Reg't.

TUESDAY, 13th May, Halifax."

Q. Where was he at the time?

A. At the time he was at the Fort in Halifax with his regiment; the letter stated that Mr. Crampton wished to see me at his quarters at 10 o'clock on Sunday; I went to see Crampton, and there I found Sir Gaspard lè Marchant, I went there with Preston, and I was ordered by Mr. Crampton to make a plan out for him in writing to go to the United States—that is, to those cities of the United States which lie on the boundary line, such as Buffalo, Rochester, Cleveland, Toledo, Detroit, Oswego and others; I wrote a plan for him; I said that I would want so many officers, and for every officer a non-commissioned officer.

Judge Kane—Does the plan affect the parties on trial?

Mr. Van Dyke—I think so; it was after arrests had taken place in some of the Western cities, that the British Minister determined to change the plan of enlistment in the States, and this witness says that in pursuance of that determination he received a letter from Lieutenant Preston to call at the quarters of Mr. Crampton; he called there, and Mr. Crampton told him that there had been some difficulty about the recruits, and wished him, Strobel, to prepare another plan, which, if adopted, would avoid that difficulty; he prepared this plan and submitted it to Mr. Crampton, and if I understand it, the witness will say that the plan was adopted by him with some little variation, and the recruiting was carried on in the United States in accordance with this remodelled plan.

Judge Kane—By either of these defendants in accordance with this plan?

Mr. Van Dyke—If I may be permitted to anticipate the defence, which must be done more or less in every case, it will be, I suppose, the same as made before the Commissioner in relation to Budd's company, that the men enlisted in Philadelphia, in that company, as the defendants allege, were nothing more or less than a set of men engaged to work on the railroad in Nova Scotia; we intend to show by this that Hertz, in so representing, was but carrying out the remodeled plan adopted, more effectually,

by Mr. Crampton, at Halifax. I shall show also by other witnesses that at a period subsequent to that of which the witness now speaks, and after the defendants were arrested, the defendant Hertz, engaged one Baron Van Schwatzenhorn and one Baron Schuminsky to carry on the enlisting business in Philadelphia, and that another company was enlisted by such agents of Hertz in a manner proposed by the remodeled plan.

Mr. Remak in reply, stated that the witness had sworn that Hertz requested him to do certain things, and whatever resulted from that alleged fact was admissible.—Mr. Strobel had given evidence in regard to drawing a plan, but he had not sworn that Hertz commissioned him to devise or draw that plan. He might have been requested by Mr. Crampton to draw the plan, but the counsel for the defence could not see how that could affect, for the present, his client. He could not be responsible for the acts of Strobel, after Strobel had done what he requested of him, and if he went beyond what was requested, he did it on his own responsibility.

Judge Kane—The evidence taken in connection with the offer of the District Attorney is admissable entirely as it stands, in the same category with evidence originally given by him of concert of the officer with the British Government. If it is not brought home to either of the parties ou trial by subsequent evidence, of course it will not effect them.

Mr. Van Dyke. I do not wish my offer to be misapprehended by the counsel for the defence, in any particular. I state distinctly to the Court that I have evidence to show that there was a regular game played by Her Majesty's Envoy, to evade the law; that these men were seemingly engaged to work on a railroad, but in reality enlisted to serve in the Foreign Legion, and that they were told by Hertz if any person questioned them, to reply that they had been engaged to work on a railroad in Nova Scotia. I have, for the prosecution, to establish certain important facts, one is: that the sending of these men to Nova Scotia was for the purpose of their being enlisted in the Foreign Legion, and their sending them there as workmen on a railroad was a specious disguise, under which they hoped to evade the law of this country. If I show that this was their intention, it is certainly evidence, and the crime is proved notwithstanding their attempt at evasion,

Judge Kane.—The evidence is admissible.

Q. Did you prepare that plan? A. I prepared it.

Q. (Showing a paper) Is that it?

A. Yes, sir, it is my own hand-writting, it is the plan.

Q. Was this submitted to Mr. Cramptou?

A. Not this one. This was the copy I first made. I afterwards made a clear copy of it which was submitted.

Q. This then is the original copy, of which a clear copy was made and submitted to Mr. Crampton? A. Yes, sir.

The paper was here read in evidence as follows:—

"I have the honor to inform his Excellency, the Envoy Extraordinary of Great Britain, in the United States, and his Excellency, Sir Gaspard lè Marchant, the Governor of Nova Scotia, of the plan I have adopted to raise the greatest possible number of men in several different cities of the United States, on the boundaries of Canada.

I wish to station in Buffalo, Lieutenant Shumann with Corporal Roth.

In Detroit, Dr. Reuss with Corporal Kamper.

In Cleveland, Dr. Aschenfeldt with Sergeant Krieger.

Opposite to Detroit, Sergeant Barchet shall receive the individuals sent by Dr. Reuss, and his duty will be to send them as fast as they arrive by railroad to Queenstown, where a depot must be established and a Magistrate appointed to enlist and attest the men, and it will be the business of the commanding officer of this depot, when a sufficient number is together, to send them by steamboat wherever his Excellency may decide. Those officers stationed at the above mentioned cities will strictly follow the instructions given to them, through me, from his Excellency, in regard to the manner and way to be used in encouraging and sending such individuals who are willing or desirous of leaving the United States to enlist in the British service. My intention, in giving to each commissioned officer a non-commissioned officer, as assistant, is, to enable those gentlemen to find out said individuals and to avoid the necessity of employing, for this purpose, strangers who might easily deceive them.

My opinion is, that every officer, with the assistance of his non-commissioned officer, will be able to transact all the business, without being compelled to hire regular agents or runners, that is if the gentlemen know the proper way of managing.

I will myself visit each of the places mentioned, and will particularly confine myself to where my presence will be most required. I shall also probably visit Chicago, where doubtless a great number of men may be got. We can then agree on reasonable terms, for having them conveyed by railroad to Detroit, which expense, in my opinion, would not exceed $2 50 per head.

I saw all the officers and non-commissined officers yesterday evening, and held a long conversation with them; the result of which is that we all perfectly understand each other, that they are all entirely satisfied, and that every one is willing to do his very best in regard to this matter.

I have also made estimates of all the expenses of the officers connected with this matter for the period of one month, at their different points of destination, including their traveling expenses, which I take the liberty of laying before your Excellencies.

Say the traveling expenses of the officers from this place to their different stations, £10 sterling each, ...	$400 00
To Schumann, Aschenfeld, and Reuss, each $240 per month, ...	720 00
[From this money each has to pay his non-commissioned officer, and to meet all other expenses that may be necessary in sending the men over on the Canadiau side, pay of temporary agents, runners and tavern keepers, included.]	
Pay for Weiss, Barchet, and other no non-commissioned officer, $100 each, ...	300 00
My traveling expenses from town to town, hotel expenses, pay of my non-commissioned officer, and his traveling expenses, ...	300 00
	$1720 00

Thus making a total amount of $1720, equal to £314 sterling.

This, or at most £360, would, in my opinion, be the amount requisite to enable ten officers to carry on operations for one month; and, with reasonable good fortune, to deliver on the Canadian shore a large number of serviceable, able-bodied men.

I have the honor to remain your Excellencies'

Most obedient humble servant."

Q. Was that plan adopted?

A. That is the plan which was approved and adopted by Mr. Crampton and Sir Gaspard le Marchant, and I received orders to bring next morning, at 11 o'clock, the officers mentioned there, four non-commissioned officers of my company, all attested men and the soldiers to the Provincial building, and meet there Sir Gaspard le Marchant and Mr. Crampton. I went there with those men; I met there Mr. Crampton, Sir Gaspard le Marchant and Lieut. Preston; I was ordered to leave Halifax immediately and repair to the States, and I left Halifax in company with Mr. Crampton and Preston of the 76th, with officers and non-commissioned officers; when I saw Mr. Crampton there I was in uniform and my non-commissioned officers were in uniform; when we left they received civil clothes from the government there, for this purpose and went on with me; when we came to Portland, Mr. Crampton gave me orders to go with him to Quebec to see Mr. Head, the Governor General of Canada, to have a perfect understanding about the depot and the means of sending men through Canada to Nova Scotia; I went with him; I saw Sir Edmund Head in the presence of Mr. Crampton; I received letters from Sir Edmund Head to get barracks at Niagara; these barracks were to receive the men who were sent out of the States to enlist in the foreign legion; I received also at Sir Edmund's house—

Judge Kane. I am anxious not to go beyond the limit of courtesy to a foreign government. I do not wish to penetrate what was done there unless it appears connected with the persons now on trial. The District Attorney must guide the witness after this suggestion, so as to avoid the appearance of too close an inquiry into matters not clearly before this Court as matters of judicial investigation.

Mr. Van Dyke. I understand the suggestion of the Court and will try to keep the witness within the proper bounds. My whole object is to get the general plan of operations and then to show that the object of the general plan was to procure men from the States to join this foreign legion, and that the defendant co-operated in that general plan.

Q. (Paper shown.) Will you look at that paper, and state what it is?

A. It is the instructions I received at Quebec, in Sir Edmund Head's house, out of Mr. Crampton's own hands. The original was written in Mr. Crampton's own handwriting, and was written, at least part of it, in my presence in his room. This is a copy made from the original; I made it for the purpose of preserving a copy. The original I gave back in a report I made to Sir Gaspard le Marchant, in Halifax. That report stated what I had done to clear me of two charges made against me up there.

Q. That then is a copy made from the original instructions of Crampton, as to your duty in the United States?

A. That is a copy of the original instructions I received at this time from Mr. Crampton.

The paper was being read as part of the evidence, when on motion, a recess was taken for ten minutes. On the Court re-assembling, the reading of the paper was concluded. It is as follows:—

"Memoranda for the guidance of those who are to make known to persons in the United Saates the terms and conditions upon which recruits will be received into the British army:—

1. The parties who may go to Buffalo, Detroit or Cleveland, for this purpose must clearly understand that they must carefully refrain from anything which would constitute a violation of the law of the United States.

2. They must, therefore, avoid any act which might bear the appearance of recruiting within the jurisdiction of the United States for a foreign service, or of hiring or retaining anybody to leave that jurisdiction with the intent to enlist in the service of a foreign power.

[Both these acts are illegal by the act of Congress of 1818, sec. 2.]

4. There must be no collection, embodiment of men, or organization whatever attempted within that jurisdiction.

5. No promises or contracts, written or verbal, on the subject of enlistment must be entered into with any person within that jurisdiction.

The information to be given will be simply that those desiring to enlist in the British army, facilities will be afforded for so doing on their crossing the line into British territory, and the terms offered by the British Government may be stated as a matter of information only, and not as implying any promise or engagement on the part of those supplying such information, so long at least as they remain within American jurisdiction.

7. It is essential to success that no assemblages of persons should take place at beer houses or other similar places of entertainment, for the purpose of devising measures for enlisting, and the parties should scrupulously avoid resorting to this or similar means of disseminating the desired information, inasmuch as the attention of the American authorities would not fail to be called to such proceedings, which would undoubtedly be regarded by them as an attempt to carry on recruiting for a foreign power within the limits of the United States; and it certainly must be borne in mind that the institution of legal proceedings against any of the parties in question, even if they were to elude the penalty, would be fatal to the success of the enlistment itself.

8. Should the strict observance of these points be neglected, and the parties thereby involve themselves in difficulty, they are hereby distinctly apprized that they must expect no sort of aid or assistance from the British Government—this government would be compelled by the clearest dictates of international duty to disavow their proceedings, and would moreover be absolved from all engagements contingent upon the success of the parties in obtaining by legal means soldiers for her Britanic Majesty's Army."

Examination continued by Mr. Van Dyke.

Q. The paper just read you copied from the original one in the hand-writing of Mr. Crampton? A. Yes, sir.

Q. (Another paper shown witness.) In whose hand-writing is paper?

A. At that very time I also received this cypher to telegraph with to Mr. Crampton, and to Halifax, about this recruiting business; I cannot swear as to whose hand-writing it is in, but I believe it is Mr. Crampton's; I did not see him write it, but, he handed it to me.

The paper was here given in evidence,—the following is a copy :

Letter.	Cypher.	Letter.	Cypher.
" a	y	n	q
b	v	o	n
c	j	p	c
d	l	q	h
e	x	r	o
f	e	s	p
g	z	t	k
h	u	u	g
i	b	v	d
j	w	w	m
k	t	x	r
l	a	y	i
m	s	z	f "

Q. You were to telegraph him by this cypher, instead of the usual way?

A. Yes, sir.

Q. What was the object in giving you this cypher?

A. Such cyphers were given to several officers—to Mr. Smolenski, Mr. Cartensen, and men actually engaged in the recruiting business, received those cyphers.

Q. Was it for the purpose of avoiding detection?

A. It was for the purpose of avoiding detection and avoiding any difficulties with the authorities here. It was to enable me to telegraph to Mr. Crampton, from every place I might visit, without the people in the telegraph offices understanding it.

Q. Were all the officers sent on this recruiting, to telegraph to Mr. Crampton as to their proceedings, and was that cypher to be used? A. Yes, sir.

Q. (Card shown witness.) What is that?

A. That is a card of invitation to Sir Gaspard's table, in Halifax, received on the 8th April.

The card was read as follows:

"His Excellency, Sir Gaspard, and Lady le Marchant, request the honor of Captain M. F. O. Von Strobel's company at Dinner, on Sunday, 8th April, at ½ to 7 o'clock.
BELVIDERE." An answer is requested."

Q. Are these also cards of invitation to you? A. Yes, sir.

The cards are here read as follows:

"COLONEL CLARKE,
The Officers of the Seventy-Sixth Regiment
Request the Honor of
CAPT. STROBEL & THE OFFICERS OF THE FOREIGN LEGION,
Company at Dinner,
On Wednesday, 18th April. *An Answer will oblige.*"

"COLONEL FRASER, COLONEL STOTHERD,
And the OFFICERS *of the Royal Artillery and Royal Engineers,*
Request the honor of
CAPT'N MAX F. O. STROBEL'S
Company at Dinner,
On Tuesday, the 3d April, at Seven o'clock.
Artillery Park." *An answer is requested.*

Judge Kane.—What are these papers for?

Mr. Van Dyke.—To corroborate what the witness says.

Judge Kane.—When the witness is impeached, it will be time enough to corroborate what he says.

Mr. Van Dyke.—I withdraw this paper.

Q. (Letter shown witness.) Did you receive that letter from Mr. McDonald?

A. Yes, sir. He is an officer in the Provincial Secretary's office.

The letter was here read in evidence as follows:

"PROVINCIAL SECRETARY'S OFFICE,
May 3d, 1855.

DEAR SIR:—I am directed by His Excellency, the Lieutenant Governor, to introduce to you the bearer, Lieutenant Kuentzel. He comes with letter to Sir Gaspard from Mr. Crampton. You will please explain to him the steps necessary for him to take to secure his commission.

Your Ob't Serv't,

BRUCE MCDONALD.

CAPT. STROBEL, 1st Comp'y Foreign Legion."

Q. (Letter shown witness.) Do you recollect this letter?

A. This is a letter written by Preston to me, while I was actively engaged in recruiting men in Buffalo, Cleveland, Detroit and other places. Mr. Preston had, at that time, charge of the barracks in Niagara.

The letter was read in evidence. It is as follows:

DEAR SMITH:—I send you the accompanying order, in currency equal to £80 sterling, which please send me a receipt for by return of post. I find I cannot make any arrangement with the railroad people here. They say the tickets had better be paid for at Windsor, which I think is best also, for then the men will come to me clear of expense, which is the intention. Tell Shuman and Dr. Asehenfeldt to telegraph me how they are getting on at once, and how *many*, or if they have got any men. Let me hear also from you.

Yours Truly,

J. W. PRESTON, 79th Regiment.

NIAGARA, 4th June, 1855."

Witness—This Mr. Preston afterwards took command of the depot that was established in Niagara town.

Q. This letter says "Dear Smith," what was the meaning of that?

A. I was obliged to take that name because I was known as being previously connected with enlisting in the States.

Q. (Paper shown witness.) What is this?

A. That is a telegraph I received from Preston.

The paper was read in evidence, as follows:

WINDSOR, June 4th, 1853.

(By telegraph from Niagara,)

To Mr. Smith.—How many men have you got? Money leaves here tomorrow morning by mail, on U. C. Bank—answer immediately.

J. W. PRESTON.

Witness—Mr. Preston was the medium between myself and le Marchant. At Halifax, Preston received the orders from le Marchant and telegraphed them to me.

Q. (Paper shown witness.) This is another telegraph from Preston, is it not?

A. Yes, sir.

The telegraphic dispatch was read in evidence, as follows:

WINDSOR CASTLE, 7th June, 1855.

(By Telegraph from Niagara.)

To MR. SMITH:—Send in statement of money issued and how applied. Tell all the others to send me similar statements;—until such arrive I cannot issue for next month. J. W. PRESTON.

(Paid.)

Q. Go on and state what occurred after you left Quebec?

A. I left Crampton in Quebec and traveled with Preston and another English gentleman, Captain Bowls, to Montreal; I there received orders for another English officer in Toronto, to give over to us the barracks in Niagara town; Preston took charge of the barracks; I met my officers who I had sent from Portland to Niagara; they were sent from Portland to Niagara Falls; I met them at Niagara Falls, and directed them to go to different places; to Cleveland, Detroit and Buffalo, and afterwards I sent one non-commissioned officer to Chicago; I was called back; I commenced it about the 4th of June, and I was recalled on the 13th, and arrived back in Halifax; I was recalled by the officers, because during this time I was only able to enlist 60 or 70 men, and Sir Gaspard expected a great many more; and through this, on account of the intrigues of Mr. Preston, and some other officers who were anxious to receive commands in this foreign legion, I was recalled to Halifax; I was charged with having kept two officers on the Canada shore instead of sending them all into the States, and I myself, instead of traveling and going to Chicago, Cleveland and all around all the time to every place, was charged with stopping too long in one place, in Windsor.

Q. Who made these charges?

A. They were made by Mr. Preston and sent to Halifax.

Q. Who sent to you and told of them?

A. Sir Gaspard le Marchant. He said that these charges had been made, and that was the reason I was sent for to Halifax. I requested a court martial, and wrote a long account to le Marchant. I also sent it to Crampton, by a friend of mine, Mr. Ochlschlager; my company was still at Melville Island, under the command of one of the officers I left there.

Q. You saw them there at that time?

A. I was forbidden to see the men, and the men had strict notice not to converse with me, at least the men received such notice the second day I was there. I told the Governor General, that under such circumstances I would leave, and the Sergeant was put in irons, and fifty men of my company sent to prison, for conferring with me by sending to me their non-commissioned officer. I left Halifax with the America, and came back to the States, and since that time I have had nothing to do with this concern. I saw Hertz here afterwards. Mr. Crampton took the address of every one of the agents who had been engaged in recruiting at that time in Boston, New York, Philadelphia and Baltimore, and told me that he was going to see them.

Q. Who did he take as the name of the person in Philadelphia?

A. Mr. Hertz was the man recruiting in Philadelphia.

Q. By Mr. Remak. Who said so?

A. Mr. Crampton took the names of different persons recruiting in different cities.

Q. Whose name did he take as the person in Philadelphia?

A. He knew the names already, but took the address of every one of those gentlemen.

Q. From you?

A. From me, those I had in my possession, the address of Captain Carstenesn, of Boston, and other parties in New York; of Smolenski, and the address of a friend of mine in Baltimore.

Q. Did Crampton take the address of Hertz from you?

A. He said he knew all about the proceedings against Hertz, and when he came to Philadelphia, he would settle with every one of those gentlemen, and arrange matters in a different way, because he thought proper not to send men by the vessels any more, but by railroad into Canada.

Q. Do you know about his giving any order about engaging emigrant runners?

A. Yes, sir; he allowed me to pay every runner $4 for a man.

Q. Do you know what Hertz was to get for every man he sent?

A. I do not know exactly the amount Mr. Hertz received, I know he received money, and I know that they said in Halifax, that Mr. Hertz ——

Mr. Remak—I object to that.

Q. By Mr. Van Dyke.—Did you ever hear from Hertz or any other person or persons in his presence, say that he received any money, and how much?

A. Yes, sir, I heard Mr. Hertz say he had received money, but never enough to cover his own expenses.

Q. Did he tell you from whom he received it?

A. He told me that he would receive money from Mr. Howe.

Q. What else did he say to you in reference to this matter?

A. Mr. Hertz told me he had connection with the English Government, and that Mr. Crampton and Mr. Howe were the proper agents for paying out the money, and giving tickets and giving recommendations for officers to get commissions. Mr. Hertz said so, and said he had instructions from the British Government to that effect, and that he would receive head-money for the men. He mentioned Howe and Crampton as persons from whom he received it.

Q. Did he mention any other? A. Not that I know of.

Q. Was Mr. Bucknell known to Mr. Hertz?

A. He did not mention him as a person engaged in it, or who had engaged him in it.

Q. Did he mention any other besides Mr. Crampton and Mr. Howe?

A. Not tha I know of.

Q. Not that you recollect? A. I do not recollect any other person.

Q. (Paper shown;) is that the report you made to Mr. Crampton of the transaction?

A. That is the report I made to Mr. Crampton.

Q. Was it delivered to him?

A. I sent it to Washington, but the bearer did not find Mr. Crampton there, he had at that time gone up to Niagara; I sent a friend to Washington with this report to Crampton, to let him know everything that occurred.

Q. When he did not find Crampton in Washington where did he take it to?

A. He took it to New York and left it with Mr. Stanley, the vice consul there.

[The report was here given in evidence. It contains a full history of the transaction, from the time the witness (Strobel) left Halifax until his return.]

It is as follows:

To His Excellency Sir Gaspard le Marchant, Lieut. Governor of Nova Scotia.

Sir—After having laid before you my plan for raising troops for the British army in the United States and on the Canada frontier, I received from you, at the Provincial

Building, Halifax, N. S., in the presence of His Excellency, Mr. Crampton, Minister from Great Britain to the United States, Mr. Preston, Lieut. 76th Regiment, and officers of the Foreign Legion, the following instructions:—

"You will repair immediately to the United States, accompanied and assisted by Drs. Aschenfeld and Reuss, Lieut. Shuman, Mr. Mirback, and four non-commissioned officers, to raise men for the British army within the jurisdiction of that Government. You will, in accordance with your plan submitted to me, station said officers and non-commissioned officers at the posts agreed upon, unless it may, in your judgment, appear expedient to alter the details of said plan. You are also authorized to order back to Halifax any of your assistants who may, in your opinion, be incompetent for the service, or who may neglect the duty assigned to them. You will receive traveling expenses for yourself, officers and non-commissioned officers, also, before leaving Halifax, the half monthly pay as per estimates, in advance, for officers and men. At the expiration of the half month, you are authorized to draw from Mr. Preston the half monthly pay again in advance, and so on. You are further authorized to draw on Mr. Preston for such sums as you may require for the transportation of men, head money, &c. You will receive all orders from me through Mr. Preston, whom you will consider as my acting aid-de-camp in this matter, and you will be the medium to transmit those orders to your officers, so that there can be neither interference with, nor interruption of the plans laid down by you. Mr. Preston will be commanding officer of the recruiting depot at Niagara town. You will exercise no interference with the transmission of men from Niagara to Halifax, but will confine yourself strictly to the duty of obtaining men in the United States, and of forwarding the same to Mr. Preston, at Niagara. You are authorized to employ such assistants as you in your judgment may deem necessary, and are further empowered to state, in my name, to any gentlemen bringing a certain number of men, say 120, that they will receive from the British Government commissions as captains in the Foreign Legion, and others, different commissions, in proportion to the number of men they may bring."

In accordance with the above instructions, I started from Halifax on the 15th of May, accompanied by my officers, as above mentioned. At Windsor, N. S., I fell in with His Excellency, Mr. Crampton, Lieut. Preston, and Capt. Bowls, who had left Halifax the same day. We traveled together to Portland, Me., where we arrived on the 18th ult. Mr. Crampton requested me to go with him to Quebec, L. C., as he was desirous that we should have a perfect understanding with, and the full co-operation of His Excellency, Sir Edmund Head, Governor of Canada. In compliance with this request, I ordered my officers and non-commissioned officers to repair to Niagara Falls, there to await my arrival. We arrived at Quebec on the 20th ult, and on the following day were received by His Excellency, Sir Edmund Head, and held a conference with him, in which he offered his best assistance in forwarding our object, and at once gave up the barracks at Niagara town, as a recruiting depot, and accordingly sent for Major Elliot, which proceedings detained us until the 23d ult. On the evening of that day, Lt. Preston, Capt. Bowls, and myself started in company with Major Elliot for Montreal, where we arrived on the morning of the 24th of May. Arrangements were then entered into with Col. Bell, in regard to the barracks at Niagara and La Prairie. On the following day I started alone for Niagara Falls, C. W., where I arrived on the morning of the 27th. Lieut. Preston and Capt. Bowls started for Toronto on the 25th, and hence did not arrive at Niagara Falls till the 28th. These gentlemen remained at Niagara Falls till the 30th, when they took possession of

Butler barracks, and the first arrangements were made for forwarding recruits to that station. As your Excellency will here observe, I was, up to this moment, viz: the 30th or 31st of May, unable to move one step in the object of our expedition, it having required all the time to arrange the preliminaries. On the same day that Mr. Preston left for Niagara town, I learned from Dr. Aschenfeldt and Mr. Shuman, that the conduct of two of my non-commissioned officers, Sergeants Roth and Krieger, had been unworthy of the confidence reposed in them, and I therefore deemed it advisable to send the said men to Lieut. Preston at Niagara town. I also thought it necessary to send to Niagara one of my officers for a double purpose. 1st. To act for Mr. Preston as Interpreter on the arrival of recruits, and 2d, as we were unable, actually, to enlist the men in Canada, I deemed it well that some German of experience and age should be with the recruits sent on, to keep them in proper spirits, and to prevent any loss by desertion from the barracks or in transitu to Halifax. I accordingly deputed Mr. Mirback for this service, and with the license permitted me in your instructions of the 14th of May, was therefore obliged to modify my plan to suit this emergency. On the 30th inst. I went with Lieut. Shuman to Buffalo. Having visited some of the localities in that place and Fort Erie, on the opposite shore of the Niagara river, I gave Lieut. Shuman the following orders, in accordance with the instructions I had received from Mr. Crampton, and which I respectfully beg leave to subjoin. 1st. I ordered Mr. Shuman to take up his quarters on the Canada shore, at the village of Fort Erie. 2d. To have his non-commissioned officer, Corporal Kamper, stationed in Buffalo. 3d. To go daily to Buffalo, and, in connection with Corporal Kamper, there to make such inquiries as might lead to the obtaining of men. 4th. To send the men as quickly as he should obtain them to Lt. Preston, at Niagara, and at the same time to report to me regularly the number of men obtained, and all circumstances relating to them. 5th. To take particular pains to lay out no moneys on the American side, but whatever related to the expenditures to induce runners to bring men to him, should be positively and rigidly transacted on the Canada shore; and further, if it were necessary to keep men together for a longer term than one day, to be careful to do so without the precincts of the United States. This latter order is strictly in accordance with articles 2d and 4th of Mr. Crampton's instructions. On the same evening, May 30th, I ordered Dr. Reuss to leave for Detroit, and informed him that he would co-operate with Dr. Aschenfeldt, who would be stationed at Windsor, on the Canada shore of the Detroit river. I also communicated to him, in effect, the same orders I had already given to Mr. Shuman. I went to Niagara town to draw the half monthly advance pay for officers, on the 31st May. As Mr. Preston was unable to pay me the amount which I required, he gave me but £40 sterling. On the 1st June I left Niagara town, accompanied by Dr. Aschenfeldt, for Cleveland, Ohio, where I had already stationed Sergeant Barchet. Passing through Buffalo, I saw Lieut. Shuman, and supplied him with some money for a few days, until I should obtain the balance of the half monthly pay from Mr. Preston. On the 2d inst. I saw Barchet in Clevelaud, and supplied him with as much money as I could spare. On the 3d I arrived with Dr. Aschenfeldt at Detroit; I saw Dr. Reuss, and supplied him with money. I then supplied Dr. Aschenfeldt with money, and left him at Windsor. On the 4th of June I again started for Niagara town, in order to receive from Mr. Preston the balance of the second half monthly pay, which I must here remark was a most useful journey, both as regards the expense and the loss of time. Had the money been properly forthcoming in the first instance this journey would have been

avoided, but I determined, as I was now obliged to go there, to make use of the journey as a means of again visiting the different posts, and paying to the officers the balance of their half monthly dues. In this I was again frustrated by a failure of the Telegraph Office in sending me a dispatch of Mr. Preston, as a check had already been sent by mail for the amount. In spite of this, however, I telegraphed from Niagara to Mr. Shuman, to meet me at Chippewa, and report to me the result of his proceedings in Buffalo. His report was much to my regret, and contrary to all my expectations, very disheartening—he having sent but four or five men to Niagara. Having learned by letter from Albany, N. Y., that there was a fair prospect at that place of obtaining from fifty to one hundred men, I ordered Mr. Shuman to direct Corporal Kamper to undertake the whole business in Buffalo, and to repair at once to Albany, there to place himself in connection and communication with the Emigrant offices and Intelligence depots there, and to use his most strenuous efforts to obtain men. Also, to communicate with me at once on the subject. As I have already stated, the check for the balance of the pay had been sent to Windsor, while I was in transitu between that place and Niagara. I was, therefore, without money, and gave Lieut. Shuman a draft on Mr. Preston for £20 sterling, knowing that it would require at least three days for me to forward the money from Windsor to him. On presentation Mr. Preston refused to honor the draft. Considering that these matters would be in proper train in Buffalo, and supposing that Shuman would leave at once for Albany, I returned to Windsor, in order to receive a report from Sergeant Barchet, stationed at Cleveland, and to inform myself how matters were progressing in Detroit. I returned to Windsor, C. W., on the evening of the 7th inst. On the following morning, to my utter astonishment, Mr. Sherman, who was kept by Mr. Preston at the depot, and in consequence of it was not able to see his men off at Buffalo again, nor to supply him with money, and to give him orders in regard to my sending Mr. Shuman to Albany, had left Niagara, by order of Mr. Preston. The night train came into Windsor in sixteen hours after my arrival, bringing me the subjoined order from Mr. Preston, marked X. As the order purports to have emenated from Your Excellency, I promptly obeyed the same, and sent Mr. Shuman to Cleveland for Barchet's account, at the same time giving him those of Drs. Aschenfeldt and Reuss and my own, giving him no further orders, but simply telling him to return to Mr. Preston as soon as possible. I had received from Barchet the information that matters in Cleveland were as disheartening as in Buffalo, also saying, that a Mr. Seybert, who keeps an Intelligence office there, was willing to undertake the business if we could station some one at Port Stanley, for the purpose of receiving men whom he would send there. I wrote to Mr. Preston, requesting him to send a non-commissioned officer or some other person to Port Stanley, to receive the men whom Mr. Seybert might send. This request was unattended to, and Mr. Preston did not even condescend to notice it.

From all that I could learn, Chicago and Milwaukie offered large inducements as a field for our operations, and as I thought the port of Cleveland would have been provided for by Mr. Preston, in accordance with my request, I sent Barchet on the 11th inst., in company with another man, to Chicago, also Dr. Reuss to Toledo, which place I had myself visited, and deemed a good port for obtaining men. I directed Barchet to communicate with me by telegraph, or otherwise, as soon as my presence and the money for tickets should be requisite in Chicago for bringing men to Niagara.

On this day, the 11th inst., Mr. Theo. A. Oehlschlager arrived at Windsor from Niagara Falls. Mr. Oehlschlager is a gentleman already known to Mr. Crampton,

and of whom Mr. Crampton and myself had several conversations. I spoke very favorably of him, and Mr. Crampton advised me to obtain so valuable an assistant.— Mr. Oehlschlager is a British subject by birth, being a native of Quebec, L. C., speaking German like a native, and French with fluency, the value of his assistance cannot be over-estimated. Having, as I have already stated, lost two non-commissioned officers, and having stationed one officer permanently with Mr. Preston, I felt the necessity of more assistance, and knowing no one more competent, I accordingly wrote for him from Cleveland on the 2d June. I remained at Windsor the 12th and 13th insts., in the expectation of receiving a letter from Barchet, and also anticipating the return of Dr. Reuss from Toledo with men. On the morning of the 13th I received a letter from Barchet, stating that Chicago was a capital place, and that a great many men might there be obtained, but it would be necessary to forward them immediately, as it would be impossible to keep them long together. I accordingly wrote at once a letter to Mr. Preston, requesting him to send me £100 sterling. Before this letter was mailed, I received the following despatch from Mr. Preston—"Send Aschenfeld back immediately." I accordingly did so, sending the letter I had written by Dr. Aschenfeld. On the following day, Dr. Reuss returned from Toledo, bringing with him four men, stating at the same time that a number of from 80 to 100 men may be obtained alone in Toledo. He also brought very good news from Sandusky and Monroe. I then received a despatch from Dr. Aschenfeld, saying "We all go back, more by letter." Having collected some eleven men at Windsor, besides seven already forwarded from this place to Niagara, and deeming the expedition, from some unknown cause, entirely broken up, I telegraphed to Mr. Preston, asking what I should do with the men. His answer was—"Forward men. Re-call Barchet and return to-morrow." Not comprehending the whole business, I deemed it best to repair at once to Niagara and have the mystery cleared up. I accordingly started the next morning leaving Mr. Oehlschlager in my place at Windsor. I arrived at Niagara on the morning of the 16th. I was cordiallly received by Mr. Preston, who informed me, that having held several conversations with Major Browne, Mr. Wieland and other gentlemen, he had come to the conclusion that we (myself and the officers under my charge) had neglected our duty and that he had two charges in particular to make against me. 1st. That I had ordered two of my officers to remain on the Canada shore. 2d. That I, myself, had remained too long inactive at Windsor, C. W. In consequence he had deemed it his duty to send a despatch to your Excelleucy acquainting you with said disposition on our parts. That you had replied directing him to act on his own responsibility. That thus empowered, he had deemed it proper to re-call all those employed and to send them back to Halifax. I informed Mr. Preston that I would at once comply with the order of your Excelleney, at the same time I assured him of my opinion as to the unadvised and rash proceedings he had deemed it proper to adopt, and further expressed my belief in his having been influenced in these measures by Major Browne, Mr. Wieland, particularly, and others, who are anxious, to my perfect knowledge, to obtain commands in the Foreign Legion. While in Niagara town, I saw a despatch from this Mr. Browne to Lieut. Preston, stating in effect that my letter to Mr. Preston, on the 13th inst. was a falsehood, and that there was no men in Chicago to be sent. The following is, I think, the wording of the despatch. "The 50 men a myth." Having some little personal business in Windsor, and wishing to communicate with Mr. Oehlschlager, I returned here this morning. On my arrival Mr. Oehlschlager informed me that shortly after my departure on the 15th inst., a Mr. Browne arrived here from Mr. Preston. He represented himself, or at least led Mr.

Oehlschlager to believe that he was a Major in the British service. Mr. Oehlschlager, under such a supposition, believing him to be an officer in the British Army, and an authorized agent of your Excellency's, immediately gave up the charge of the post and of the men. Mr. Browne sent the men on to Niagara that evening, in charge of Dr. Reuss, who left yesterday for Halifax. I also found here a dispatch from Chicago from a man named Konen, employed by me at that place, which fully substantiates the good news contained in Barchett's letter. It reads as follows: "Come here immediately; twenty ready; tickets wanted."

I have thus far, your Excellency, attempted to give a rough outline of what I have done since my departure from Halifax, and shall now leave it with yourself to judge whether the time has been wantonly thrown away, and whether I have neglected my duty or not. There have, it is true, been many causes which have rendered the expedition less successful than I had imagined in the offset, but over these circumstances I have, as you may judge from the above statement, been able to exercise but little or no control. Besides, your Excellency will be pleased to take into consideration that we have not had more than eight or nine working days of real trial. We did not get fully into operation before the 4th or 5th. On the 7th, Mr. Shumann was withdrawn by order of Mr. Preston. Not before the 9th, the bills we had printed were in our hands and posted. The 10th was Sunday. On the 13th the expedition was virtually broken up, Dr. Aschenfeld re-called, and your Excellency in possession of a dispatch to that effect.

The difficulties under which we had to labor were, in the beginning, very great. In the first place, shortly before our arrival, the navigation of the great lakes was opened, and thousands of men who had lain idle for months were at once thrown into employment. A week before Mr. Shumann arrived at Buffalo, six hundred working men had been withdrawn from that place to work on the telegraph line through Newfoundland. In short, work was plenty and the weather mild, it is, therefore, but little wonder that under such auspicious circumstances we did not succeed at once. Then the Americans have in every city in which we have been, a recruiting officer, where they offered $12 per month and bounty of one hundred and sixty acres of land, and besides giving head money to the runners. Again, a great antipathy appears to prevail throughout the United States to British service, and a strong mistrust of the whole business, from the occurrence relating thereto, which took place in the Eastern cities. These difficulties had to be overcome, and just when we arrived at a point where the prospects began to brighten, and we had tangible hopes of our ultimate success, the whole matter, as far as ourselves are concerned, is given up, without my being in the slightest instance consulted or advised with. From certain remarks of this Mr. Browne, I am led to believe that the conduct of the money matters of the expedition, has also been called in question. In refutation of any such malignant charge, I respectfully beg leave to subjoin my accounts, and request that those of my officers may be strictly examined.

A few words in relation to the charges made against me by Mr. Preston. The first is simply enough refuted by all that part of the above statement, which refers to my orders and instructions to Dr. Aschenfeld and Mr. Shumann. Of the second, I have but to observe, that when I started from Halifax I was under the impression that I was given charge of this expedition in the United States, that I had discretionary power to take up my head quarters where I deemed best, and where I could most readily hear from my assistants, and not that my conduct was to be subject to the

espionage and impertinent interference of men of whom I had no knowledge whatever, in connection with this expedition. I refer to Mr. Browne and others. Nor can I conceive how Mr. Preston could commit such a gross error as he has done, in breaking up this expedition, without stronger and more sufficient reasons.

I have now to make a few remarks on Mr. Preston's conduct in connection with this business, which, however painful it may be, I consider it my duty to your Excellency, under whose orders I have been engaged in this matter, and to myself. Mr. Preston in the first place. as early as the 7th inst., violated the spirit and letter of your instructions to me in two instances. 1st. By failing to pay my draft sent by Mr. Shumann—and 2dly. By sending Mr. Shumann down to Windsor, when I sent him to Albany. In short, I have failed to meet from Mr. Preston, that cordial co-operation and friendly assistance, which I had hoped for, and on which the success of such an expedition so eminently depends. I feel pleasure, however, in saying, that I can look upon this failure on the part of Mr. Preston, in no other light than as an error of judgment, and his being too easily influenced by others.

With the above statement of the facts of the last month, and which I am ready to substantiate at any moment, by the testimony of my officers and others, I beg leave to submit this, my report, to your Excellency's kind consideration.

I have the honor to remain,

Your Excellency's very obedient servant,

MAX FRANZ OTTO STROBEL,

Captain Forg. Leg."

"Windsor, C. W., June, 18th, 1855.

Mr. Remak—Was this paper ever delivered?

A. It was delivered to Mr. Crampton and Sir Gaspard le Marchant.

Mr. Van Dyke—Did Mr. Hertz say anything to you in reference to having advertised in any paper in Philadelphia?

A. Yes, sir, the advertisement was in Mr. Hertz's office, in the newspapers.

Q. Did he say anything to you as to his advertising?

A. He said he was obliged to have it advertised in order to get men.

Q. What advertised?

A. This proclamation. Mr. Hertz sent men to the office of the paper to see if it was advertised.

Q. When was that?

A. I cannot recollect the very date—it was before I went away with my company.

Q. Do you recollect the advertisement? A. Yes, sir, I recollect the advertisement; I have seen it in the paper, but do not recollect the very day.

Q. What do you know of Mr. Hertz putting this (showing witness the Pennsylvanian containing the advertisement,) in the paper?

A. Mr. Hertz says, I suppose by this advertisement we would get some men.

Q. Where did you last see Hertz before sailing from Philadelphia with your men?

A. I saw Mr. Hertz on the boat. He came down in the morning to the wharf where we sailed from, and it was at that very moment that he gave me the money, $25.

Q. On the boat Delaware, on which you sailed on Sunday morning, of March 16, 1855? A. Yes, sir.

Q. Will you state to the Court and Jury whether you recommended to Mr. Crampton a certain Col. Burgthal?

Mr. Remak objected—Objection was sustained.

Q. By Mr. Van Dyke—Is there anything else you recollect in connection with Mr. Hertz that you have not stated, if there is, state it? Any conversations that you had with Mr. Hertz or Mr. Crampton about Mr. Hertz being engaged in this business?

A. I remember a conversation with Crampton about Hertz, where Crampton said he believed—

The question and answers were ruled out.

Q. Do you recollect any conversation Mr. Hertz had with any person or any conversation you had with him?

A. I heard many conversations of Mr. Hertz with other officers who left for Halifax. It was a promise Hertz made to these men in the name of Mr. Howe, and through Mr. Howe in the name of the English Government, to give them commissions in the foreign legion, if they would go to Halifax, if they were military men before, and so on, and when some of them would express doubts on the subject, Mr. Hertz would try and prove that he had really the power to promise.

Q. Anything else?

A. I remember there was some money given to the men by Mr. Hertz.

Q. Which men? A. To the men who enlisted.

Q. What was money given them for?

A. To pay board to the very day they sailed from the time of enlistment to the time of leaving.

Q. Who paid for the tickets? A. I suppose Mr. Hertz, I do not know.

Q. Who gave the tickets? A. Mr. Hertz did.

Q. For the 78 you took? A. Yes, sir.

Q. You say you had a hundred in your company, how happened it that you only took that number?

A. Afterwards some men were sent from Philadelphia.

Q. How did it happen that you first had 100 men and only took 78 with you?

A. The other parties came on afterwards, and were put to my company as they came on, particularly men from Philadelphia.

Q. What become of this company?

A. It sailed on the 8th of August for Portsmouth, England; to equip for its destination.

Q. (Cards shown witness) What are these?

A. These are the cards which were given to the men to get a passage on board the boat. Mr. Hertz got the cards, I do not know where he got them from.

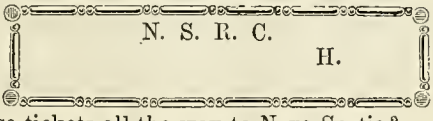
Q. What is that on it? A. It is H.

Q. Whose signature is it? A. Mr. Hertz.

Q. What is the the meaning of N. S. R. C.?

A. It means Nova Scotia Railroad Company, I suppose.

The ticket was given in evidence—the following is a cepy:—



Q. Did you take these tickets all the way to Nova Scotia?

A. Every man had one of those tickets, and they passed him on the boat.

Cross-examined by Mr. Remak.

Q. Did you go to see Mr. Hertz of your own notion, or did anybody request you to go to see him?

A. I was requested by Dr. Biell to see Mr. Hertz, as I had seen Crampton only a few weeks before.

Q. Did you know Hertz before that time, before Biell mentioned his name?

A. No, sir.

Q. You did not know him at all? A. No, sir.

Q. You had already seen Mr. Crampton at the time Biell spoke to you?

A. Yes, sir; Biell told me Hertz had a letter which he had shown him—

Mr. Remak—There is no use saying that. You saw Hertz on the 10th of March?

A. Yes, sir.

Q. Where did you see him? A. At his office, 68 South Third street.

Q. Did you know the business of Mr. Hertz?

A. Yes, sir, he was enlisting men for the foreign service; Mr. Hertz himself said so when I came up there.

Q. Was it not at his office you said people came in and enlisted and entered their names in a book? A. Yes, sir.

Q. (Showing book,) here is the book presented to you, do you swear that this is the identical book you saw there?

A. Yes, sir.

Q. Were all the names here entered by the persons themselves, or by whom?

A. Not exactly all these names, many of the men signed their names themselves, and others could not write, and Mr. Hertz or somebody wrote down the names.

Q. Now be so good as to describe this book; does it contain anything but the names and places of residence?

A. It contains the names of those men; most of them I took with me, as my Company, to Halifax.

Q. And contains the residence of some? A. Yes, sir, of some.

Q. It contains nothing else?

A. It contained at that time the names of several officers willing to go; it contains now but those names.

Q. You say you received money from Mr. Hertz? A. Yes, sir.

Q. For what purpose?

A. I received money from Mr. Hertz, and was obliged to give him a kind of note, in which I stated I had received so much money, and it would be repaid.

Q. (Showing witness a paper.) Is this paper signed by you? A. Yes, sir.

The paper was read as follows:

"I received from Mr. Hertz $5 00 on my word of honor.

MAX F. O. STROBEL."

Mr. Remak—The figures are blotted, and it looks as if it had been altered from $5 to $25.

Witness—The signature is true, but I believe the 25 is false. I actually received, on my word of honor, from Mr. Hertz $10 00, but I never remember having given Hertz a receipt for this $25; I received on board the boat; I never remember, but there is a possibility.

Q. You stated in your examination in chief that you received $25 00 the day you started?

A. Yes, sir, I received $25 that day.

Q. You state now you do not remember having given a receipt for it?

A. I do not remember; I acknowledge this signature—that might be another note I gave to Hertz, stating I only received $5 00. This is my signature.

Q. You received $25 on that day, and this paper states in numbers 25?

A. It states here $25. I do not recollect signing any paper for $25. I recollect saying to Mr. Bucknell I received that money.

Judge Kane—Is this material?

Mr. Remak—It is for the purpose of showing that money has been loaned to the witness.

Q. You say you were present when several different men came in at different times and signed their names in that book? What were the conversations between Hertz and those persons?

A. The conversation was that he showed the parties the proclamation or advertisement, and he said there is a foreign legion as you see in Halifax, and if you feel able and disposed to enter this foreign legion in Halifax, I will give you the means to go to Halifax as a soldier in that legion—that is, if you are willing to go to Halifax and be enlisted for this foreign service.

Q. Can you swear that Hertz ever said to enlist as a soldier for the foreign service?

A. I can swear that he said he wanted them to go to Halifax for the purpose of enlisting for British service?

Q. Did he pay anything to them?

A. He paid to several of them, but not every one—to some of them he paid one dollar; to some 25 cents, and to some 50 cents.

Q. Do you recollect the names of any of the men to whom he gave 25 cents?

A. To Purde, and several others, their names are in the list.

Q. Were any of those people very poor? A. Yes, sir, some of them were.

Q. Did you know that these people were actually in want of food?

A. Not in want of food.

Q. Do you believe that these people had any money at all?

A. I believe they had none.

Q. Were they not looking out for work? A. They had been looking out for work.

Q. And could they get it?

A. They said they could, but as they were detained they must be paid.

Q. They could get work they said? A. If they would not be retained.

Q. Did these people use the word retained?

A. They said they could get work if they were not kept waiting here doing nothing, and being promised every day that this vessel should sail for Halifax.

Q. Then these people did not employ the expression retained.

A. Well, they were retained.

Mr. Remak—you have to give the conversation exactly as it took place; be very strict; what language did these people speak?

A. In the German.

Q. Then they had no idea of the word "retained?"

A. We have a word in German that means as much.

Q. What is it? A. "Augeholten."

Mr. Remak—May it please your Honor, that word means detained.

Q. Did not these people mean to say that their time was wasted by being unemployed?

A. No, sir, they said or meant by saying so, that their time was taken by Mr. Hertz.

Q. Did not some people come into the office who declined to go to Halifax?

A. Not that I remember. Some of them came once, but never afterwards.

Q. What did Hertz say when they declined—if you recollect they did decline?

A. I do not remember that any one declined.

Q. Did Mr. Hertz offer them anything the moment he spoke of going to Halifax?

A. Not at that moment.

Q. Mr. Hertz did not offer them anything when he asked them to go to Halifax?

A. No, sir.

Q. Did he actually ask them to go to Halifax? A. Yes, sir.

Q. Did not he leave it optional? Did not he represent the matter that they would get employment there?

Witness—Get employment in Halifax?

Mr. Remak—Some employment.

Witness—No, sir, that could not be, because this advertisement was laying on the table, and for that purpose the men came up.

Q. When the men came in you say Hertz did not offer them anything; when they were ready to go to Halifax, what did Hertz say?

A. Mr. Hertz said I have a vessel ready for you to start in a day or so.

Q. Did he state for what purpose this vessel would start?

A. For conveying these men to the "foreign legion," at Halifax.

Q. You stated that he gave some of the men one dollar and some twenty-five cents, to how many of the men did he give anything at all?

A. It is very difficult to say.

Q. Did he give to twenty? A. I suppose that is the number.

Q. Have you been present every time he gave these men something?

A. Not every time, but he gave to that many in my presence.

Q. Then you remember that he gave to more than twenty?

A. Not to more than twenty. I cannot say that he gave to more than twenty.

Q. Then you do not know if he gave to any one else? A. No, sir.

Q. The names you remember mention now.

A. Barrier, Bleeher, Brining, Foley, Worrell.

The Court here overruled the question.

Q. You stated in your examination in chief, that some of the men received money to board?

A. Yes, sir.

Q. How much did they receive?

A. I cannot tell whether Hertz gave three shillings or four shillings; to some he gave three, some four, and perhaps some a dollar.

Q. Did Mr. Hertz ever promise you a commission? A. Yes, sir.

Q. Where did he promise you? A. In his office.

Q. In whose presence?

A. In the presence of Mr. Rumberg and Lieutenant Essen.

Q. Did he show you any authority for doing so?

A. I believed he had, because he made me himself acquainted about the letters and orders he had received from the British Government, and I showed him my letters, although I never saw his letters. He promised me a commission.

Q. Did Mr. Hertz derive any benefit from all the transactions you know of?

A. I cannot tell.

Q. You remember that you said in your examination in chief, that Mr. Hertz said himself that what he had received did not cover expenses?

A. At that time.

Q. Do you know, from your own knowledge, that Hertz has received at any other time, any more money?

A. I cannot swear that Hertz received more money than he expended, but I can swear he received money.

Q. Then he did not derive any benefit from his business transactions?

A. I do not know.

Q. As far as you know?

A. As far as I know, no; but I cannot see into his business matters, certainly.

Q. Could Mr. Hertz have any direct benefit from the fact of any of those men going to Halifax?

A. Yes, sir.

Q. In what manner? A. He would receive $4 for every head.

Q. Would the $4 come from the man himself?

A. No, sir; it would be paid by the English government; the man could not pay, but the English government paid $4 for every head.

Q. Can you say whether any agreement has taken place between Hertz and you, or with any of these men with regard to the transaction?

A. Yes, sir.

Q. What was the character of it?

A. The agreement was, that I take this company to Halifax, and I was introduced to the men of the company as their Captain; and I had to bring them up to Halifax.

Q. Did you derive any benefit from this matter? You received money, did you not?

A. I received no money except that necessary to take the men to Halifax, and their tickets.

Q. You received no money?

A. No money for myself, but money to take the men there, for the government.

Q. You received no money for yourself?

A. No money for myself, from the government. What I received for doing this, was the commission.

Q. Did you receive from Hertz any money?

A. I received as a private matter $10 from Hertz; but I received $25 to feed the men on the boat.

Q. Then, Mr. Strobel, had you any direct authority from the English government at the time?

Witness—Direct authority to do what?

Mr. Remak—Any direct authority at all. I do not care what it is. Did you hold any commission?

A. Just the commission as promised by Hertz.

Q. You had no commission?

A. I had no commission at that time.

Q. Then you cannot say you was at the time the representative of the English government, or agent of that government?

A. Certainly, I was insomuch an agent that I agreed with the English government to bring men to Halifax.

Q. You considered yourself so? A. I did not consider, I thought so.

Q. When did you agree with the English government?

A. So early as the beginning of April, with Mr. Crampton.

Q. Did you agree to take the identical men you started with on the 25th of March?

A. No, sir, not those men, but any men.

Q. Then you had no other authority but what you thought you had from Hertz, when you took these men?

A. Not for bringing these very men I named here.

Judge Kane—The witness says he had authority from Mr. Crampton to take such men as should be enlisted, and that it was from Hertz that he got the directions of the particular persons enlisted and who were to be carried on.

Q. Did you make any promise to Hertz in return for the so called authority he gave you? A. Yes, sir.

Q. What was the promise?

A. I promised Mr. Hertz that upon arriving in Halifax I would state that Mr. Hertz had sent these men, and that he had a great many more men, and had made arrangements with parties in New York, but was not able to send them, and I was to secure him every man he sent from Philadelphia to Halifax.

Q. Did you ever pay to Mr. Hertz afterwards anything for the trouble he took to send men to Halifax? A. I did not.

Q. Do you know whether anybody else paid Hertz for the trouble he took on that day or any other time?

A. I do not know; I know that Hertz received money for the men in New York.

Q. Did you ever see Mr. Crampton in the presence of anybody else? A. Yes, sir.

Q. Who was present?

A. I saw Mr. Crampton in the presence of Dr. Ruess, for instance, Major Boutz, Sergeant Burgit, and Rose, and others; I travelled with Crampton and Preston in company with other gentlemen up to Quebec from Halifax; these instructions were in the hand-writing of Crampton.

Q. I want to know if Hertz ever read those instructions?

A. I do not know whether Mr. Crampton sent him a copy of them or not.

Q. Then you do not know whether he had ever any knowledge of these instructions?

A. They were written after I left here, and I could, therefore, not tell.

MONDAY'S PROCEEDINGS, SEPT. 24, 1855.

HORACE B. MANN, sworn—Examined by Mr. Van Dyke.

Q. Are you engaged in the Pennsylvanian office? A. Yes, sir.

Q. (Paper shown witness.) Do you know whether that advertisement was ordered to be published there?

A. As regards ordering the advertisement I do not know anything about it, but that is a copy of the Pennsylvanian.

Q. Do you know anything about the discontinuing of it?

A. Yes, sir, it was ordered to be discontinued by Mr. Hertz; I discontinued it at his order.

Q. Is that the receipt for the advertisement?

A. That is the receipt for the payment of that advertisement; Mr. Magill is the person who received the advertisement; the paper in which it appears was published March 16th, and the receipt is dated March 15th.

The receipt was here read in evidence as follows :—

PHILADELPHIA, *March 15th*, 1855.

Lieutenant-Governor of Nova Scotia,

To Advertising in the PENNSYLVANIAN,

2 Squares *for one month*, - - - $5 00

Received Payment for the Proprietor,
WM. MAGILL.

MAX F. O. STROBEL, re-called. Examined by Mr. Van Dyke.

Q. You have been sworn? A. Yes, sir.

Q. You are acquainted with the hand-writing of Mr. Howe? A. I have seen it.

Q. What position did he hold in March and February, 1855?

A. He was the general agent of the British government in the States for this recruiting.

Q. (Paper shown witness.) Will you look at that paper and say whether it is in his hand-writing?

A. I believe it is Mr. Howe's hand-writing; I have seen him write.

The paper was here read in evidence, Mr. Van Dyke stating it was the original of the advertisement which appeared in the papers in regard to this matter. It is as follows:

"The Lieutenant-Governor of Nova Scotia is empowered by Her Britannic Majesty's Government to raise any number of men, which may be required, to serve in the Foreign Legion.

Depots are established at Halifax, and all able-bodied men, between the ages of 20 and 35, who may present themselves, will be enlisted.

The terms of service will be 3 or 5 years.

Officers who have seen service are eligible for commissions.

Surgeons speaking the continental languages, or some of them, will be required.

Pensions or gratuities for wounds or eminent services in the field will also be given.

On the Expiration of the term for which they enlist, the troops will be sent to their native countries or to America."

Q. You said you are acquainted with Mr. Crampton's hand-writing? A. Yes, sir.

Q. (Paper shown.) Is that his writing?

A. That is Mr. Crampton's hand-writing.

Q. By Mr. Cuyler. You have seen him write, you say? A. Yes, sir.

The paper was here read in evidence, as follows:

"SATURDAY, January 27, 1855.

SIR—I should be happy to see you at any time you may choose to call, to-day or to-morrow.

Mr. Hertz, I am, sir, your most obedient servant,
[Signed.] JOHN F. CRAMPTON."

[ENVELOPE.]

MR. HERTZ,

J. F. C. *Williard's.*

Q. (Another paper shown.) Is that also in Mr. Crampton's hand-writing?

A. Yes, sir, that is Mr. Crampton's hand-writing.

The paper, which was read, is as follows:

"WASHINGTON, Feb. 4th, 1855.

SIR—With reference to our late conversation, I am now enabled to give you some more definite information on the subject to which it related.

H. Hertz, Esq. I am sir, your obedient servant,
[Signed,] JOHN F. CRAMPTON."

[ENVELOPE.]

Paid J. F. C.

WASHINGTON, H. HERTZ, ESQ.,
Feb. 4, 424 N. Twelfth Street,
D. C. Philadelphia.

Q. Do you know Mr. Wilkins' hand-writing? A. Yes, sir.

Q. Is he Provincial Secretary? A. Yes, sir.

Q. (Paper shown witness.) Is that his writing?

A. It is. I have seen him write; that is his signature on the back of it.

Q. Do you know whether Hertz was in Halifax in June?

A. Yes, sir, he was in Halifax in June.

Q. Do you recollect the day?

A. I cannot recollect what day, it was in the beginning of the month.

Q. In whose hand-writing is the direction on the envelope?

A. I believe it is Wilkins' too.

The paper, with envelope, was read in evidence, as follows:

"PROVINCIAL SECRETARY'S OFFICE.
11th June, 1855,

SIR—I am in receipt of your letter of this date, and am commanded by His Excellency, Sir Gaspard le Marchant, to inform you that in reference to the claim advanced in your communication, Mr. Howe, previous to his departure for England, distinctly stated to His Excellency, that the moneys which you had received on account, more than cancelled any claim that you might prefer.

Any instructions given to Mr. Howe by Sir Gaspard, will speak for themselves, whilst Mr. Howe will best account for his own acts on his return from England.

In his absence, nothing can possibly be done by Sir Gaspard, in relation to yourself.

You must consider this a final answer given by his Excellency's command.

I have the honor to be, sir, your most obedient servant,

LEWIS M. WILKINS.

Mr. H. Hertz.

[Envelope.]

On Her Majesty's Service.

Mr. H. HERTZ,

Provincial Secretary's Office.

Q. Are you acquainted with the British Secretary of Legation?

A. Yes, sir, I have seen him.

Q. Do you know his hand-writing?

A. I have seen his writing, but never saw him write. I never had any conversation with Mr. Lumley. I always addressed my letters to Mr. Crampton or Mr. Lumley; I never received any replies from Mr. Lumley.

The defendant's counsel admit the paper to be in the hand-writing of Mr. Lumley, and it is read in evidence as follows:

"Washington, May 31, 1855.

Sir—In the absence of Mr. Crampton I beg to acknowledge the receipt of your letter of the 20th inst., although I am not aware that I have had the advantage of making your acquaintance, I beg to inform you, as Secretary of H. M. Legation, that no charge against you of the nature to which you refer has been made to me. It is, therefore, superfluous to add that I have never expressed the opinion reported to you as having been used by me. I am, sir, your most obedient servant,

T. SAVILE LUMLEY.

[envelope.]

Paid T. S. L.

Washington,
May 31, 1855,
D. C.

HENRY HERTZ,
424 North Twelfth street, below Coates,
Philadelphia, Pa.

Q. Did you know the Vice Consul at New York? A. Yes, sir.

Q. What is his name? A. Mr. Stanley.

Q. Do you know his writing? A. Yes, sir, I have seen him write.

Q. (Letter shown witness.) Is that a letter of Mr. Stanley's? A. Yes, sir.

The letter and envelope was read in evidence as follows:—

"New York, June 19th, 1855.

"Sir—I am obliged to you for the cutting from the newspaper which you forwarded with the note of the 17th, both being received by me yesterday. I do not under-

stand the spirit evinced by the writer of the newspaper paragraph. I am not yet aware of any United States laws being broken in the matter to which he has reference, and have not the slightest interest therein.

Regarding your claim against the Nova Scotia Government, I have not received any communication from that quarter, as you led me to expect would be the case. As I informed you when in the city, it is not possible that I should be acquainted with the subject; but if so ordered, I shall be happy to remit you the amount.

I have seen Mr. Mathew, who happened to be in New York, being in hopes that I might procure through him, some information which would aid you in this matter, but being unsuccessful in obtaining any, it is utterly out of my power to forward your views.

Remaining your obedient servant,

(Signed) C. H. STANLEY."

[ENVELOPE.]

NEW YORK, June 19.

MR. H. HERTZ, 424 North 12th Street, Philadelphia.

Q. (A card here shown witness.) Do you recollect that card? A. Yes, sir.

Q. It is written in what language? A. In German.

Q. Do you know whose writing it is in?

A. It is a card written by Mr. Benas, at the request of Mr. Hertz.

Q. Who was Mr. Benas?

A. He was at that time with Mr. Hertz; I do not know Mr. Benas himself. He was with Mr. Hertz, and this was brought to me by a man who came up to Halifax and enlisted in my company.

Q. Did he go with you?

A. No, sir, he was sent to my company at Halifax by Mr. Hertz, and he brought this card to me, recommending this man to me as secretary of a company.

Q. This man was enlisted in your company? A. Yes, sir.

Q. Before you left? A. No, sir.

Q. He came on after the company left here, then? A. Yes, sir.

By Mr. Cuyler—Did you see this card written?

A. I could not have seen it, because I was in Halifax, and this man brought it up there.

Q. Do you know Mr. Benas who signs it?

A. I know him now; I did not know him at that time.

Q. Are you familiar with his writing?

A. I never saw him writing and cannot say of my own knowledge that this card is in his writing, but it was brought to me from this very man.

Mr. Cuyler objected to the reading of the card in evidence.

It was shown to the jury, but as it was in German, few read it. We present a translation:

"I recommend to you the bearer of this card, Mr. Sporer, an excellent and perfect penman; if it lies in your power to obtain for him a position as clerk in your company, you will thereby greatly serve me. [Signed]

M. BENAS."

By request of H. Hertz.

Q. Do you know Turnbull? A. Yes, sir.

Q. What was he in June, 1855. A. He was at that time an agent for Mr. Crampton.

Q. Where is he located?

A. He was sent to the West—to Cincinnati; to aid Col. Korponay.

Q. (Letter shown witness.) Is that his letter to you?

A. That is Mr. Turnbull's letter to me from Cincinnati.

Mr. Van Dyke offered the letter in evidence.

Mr. Cuyler objected.

The objection was sustained and the letter ruled out.

CHARLES RUMBERG, sworn—Examined by Mr. Van Dyke.

Q. What is your business?

A. I have been editor of the Philadelphia *German Democrat*, and I am now editor of a German paper at Pottsville, and co-editor of the *Adopted American* here.

Q. Will you state whether you have ever been in the army?

A. Yes, sir, I have been in the army of several German States. I have been captain. I came to this country nine years ago.

Q. State whether you ever saw Mr. Crampton?

A. I have not seen Mr. Crampton. I have seen Mr. Matthew.

Q. Will you state what took place between you and Matthews?

A. After having read the proclamation and resolution of the British Government, for enlisting able bodied men for the "Foreign Legion."

Q. That is the one passed in Parliament?

A. Yes, sir; asking for recruiting able-bodied men for the "foreign legion." I went to Mr. Matthew, and said to him that I could enlist from 400 to 500 men. Well, I made no arrangements in relation to the enlistment with Mr. Matthew, but I gave him a letter to the British Minister of Foreign Affairs in London, and he told me he would transmit it there.

Q. How long after that did you see Mr. Howe? A. Six or eight weeks after that.

Q. Where did you first see him?

A. He came to my office in Third street, and asked me to agree with him as to the terms for enlisting men for this legion, and I replied to him that I would come on another day to see him for the arrangement of that matter. I went to him, and met there Mr. Hertz.

Q. Where at? A. Jones' Hotel.

Q. What took place there?

A. After having some conversation with him, I considered it too hazardous and dangerous to go in that concern, and then I retired. I declined to engage.

Q. Did you see him afterwards?

A. Yes, sir; but at that time Mr. Howe promised to give me a commission in the "legion."

Q. Was Mr. Hertz present at that time? A. Mr. Hertz was present at that time.

Q. What else did he say to you? A. That was all.

Q. What inducement did he hold out to you in order to get you to go into this business?

A. I did not know at that time precisely that the laws of the United States forbid the recruiting, and not believing that it was against the law, I would have gone into

it, but after having consulted with many of my friends, I came to the resolution to decline.

Q. Did you see him afterwards? A. No, I did not see him after that.

Q. (The original drafts of the proclamation which Mr. Strobel testified was the hand-writing of Mr. Howe and is given above; see page 41 for this paper,) was here shown the witness, and the question was asked him whether he had ever seen it? He answered, I have seen that paper before; I have translated it, and it has been inserted in the Philadelphia *Democrat*, *German Democrat*, and *Free Press*.

Q. Who asked you to translate and insert it? A. Mr. Hertz.

Q Did you ever go to Mr. Hertz's office?

A. I have been to it once or twice; it was only to see what was going on.

Q. Did you ever go to collect money for his advertisement?

A. No, sir. I think Mr. Murris, the clerk, did that.

Q. What was going on there when you went there?

A. I have seen there many men, but it was not my business to look at it.

Q. Did you ever ask Hertz, or did he ever tell you without being asked, how many men he sent to Halifax?

A. Yes, sir, he told me he sent 100 or so on to Halifax.

Q. Did he say what he sent them for? A. No.

Q. Did he tell you who took them?

A. It was only in a conversation in the street, and I was not particular.

Q. Did he ever say anything to you in reference to your going there yourself to take the command?

A. Yes, sir, he has told me to go and I have replied that I would not.

Q. How often did you see Hertz in the presence of Howe?

A. I believe, twice.

Q. When was the second time? A. That was when I declined.

C. Was Mr. Hertz with Howe when you saw him at your office?

A. No, sir, there was nobody with him.

Q. You only saw him then, once at your office and once in the presence of Mr. Hertz, at Jones' Hotel.

A. Yes, sir.

Cross-examined by Mr. Remak.

Q. Did you not know Hertz before Howe introduced him?

A. Yes, sir, I have spoken to him.

Q. You have stated that at first you were inclined to go into this matter. Did not you write in your paper articles in favor of the "Foreign Legion?"

A. No, sir.

Q. Did not your paper contain such articles; A. I believe not.

Q. Do you not remember that the Democratic paper, at whose head you were at the time, had articles against it?

A. I believe it had articles against it.

Q. And was not you yourself in favor of this "Foreign League?"

A. No, sir, I was not in favor of it.

Q. Did you not induce Hertz to put in that advertisement?

A. No, sir; he desired me. I translated it.

Q. Did not you go to Mr. Howe in order to induce him to do something in relation to this translation?

A. Not to my recollection; nothing of the kind.

Mr. Van Dyke here showed witness an advertisement in a German paper, and asked him whether it was a translation of the original paper which was handed him?

A. It is the translation.

Q. You put that in at whose request? A. For a month, I think.

Q. Who asked you to publish it?

A. I published it at the request of Mr. Hertz.

Q. By Mr. Cuyler—Where did he (Hertz) ask you to translate it?

A. He asked me to translate it and insert it in our paper.

Q. By Mr. Cuyler—At what place did he ask you that?

A. I remember not, but I believe it was in his office.

Mr. Cuyler. You are perfectly sure that Hertz asked you?

A. I am sure Hertz asked me to translate it and insert it in the *Free Press* and *Philadelphia Democrat.*

Mr. Cuyler. Did Hertz personally himself ask you? A. Yes, sir.

Mr. Van Dyke here gave in evidence the German translation of the original proclamation, as published in the German papers of this city. The original can be found in Strobel's testimony on page 41.

THOMAS L. BUCKNELL, sworn.—Examined by Mr. Van Dyke.

Q. Will you state to the Court and Jury all you know of this matter?

A. Well, on the 18th of March it was I heard that the Hon. Joseph Howe, who was either President or Director of the railroads in the Province, was in New York, and I went on in the 5 o'clock train. I wished to see the procession of the 17th of March, "St. Patrick's day," and I thought I might see both together. I saw him at half-past 11 o'clock, on the 16th, at Delmonico's Hotel. I spoke to him of what I had visited New York for, and he told me he would see me again and see what he could do about giving me employment as Civil Engineer. He said you can be of use to me in one or two matters while in the city, he gave me some ten sovereigns I think to go to bank to get changed into American money and buy some stationery. Well, I bought the stationery, and got the money changed, and went back and gave the money up, and that was the last I saw of him on that day. On the 17th, I called again, and he asked me to dine with him. I dined with him about half-past 4, and showed him my testimonials from different engineers. Two or three gentlemen came in while at dinner, and the conversation stopped about what he could do for me. I do not think I saw him then until Monday, and he asked me, if in the course of my walks through the city I would call for him at the Metropolitan Hotel, and see if there were any letters for him. I called there and got two letters and brought them to, him he had gone out for the evening and I left them with the bookkeeper, I forget now whether I sent them up to his room or left them with the bookkeeper; I called next day, I think it was on Tuesday, and he asked me whether I would like to go on to Philadelphia and Washington; I said it was all the same to me where I go, for I have nothing else to do; so he gave me a parcel tied up, I don't know whether it was directed or not, to leave with a man by the name of Hertz, at No 68 South Third street, Philadelphia; I brought the parcel on and called next morning at No 68 South Third street, and asked if there was a man by the name of Hertz there; there was a small sized man in the room and he said that Mr. Hertz was in the next room and he would call him; he called him, and he come out and said I am Hertz; I then said the Hon. Joseph Howe directed me to leave this with you, and you will please give me a

receipt for it; I then left the parcel. That was all the conversation I had with him on that occasion; I left his office and went with some printed or sealed documents to Washington.

Q. From him?

A. No, sir, from Howe. I did not get any answer to those. I came back again. The sealed documents were directed to Mr. Crampton. He, Mr. Crampton, asked me when I left New York. I told him about leaving this parcel at Hertz's, and he told me he would recommend me to call back that way and get it again.

Q. You are sure it was him?

A. Yes, sir, I am certain. He told me to call that way again. I called at Hertz's office on my way back, and gave him the receipt I had taken for the papers, and took away the papers I had left at his office. That was the last I saw of Hertz until I saw him at the office.

Q. What papers were they?

A. They are the printed circulars that came from Halifax; the circulars with the British Coat of Arms upon it.

Judge Kane—The witness spoke of that as an enclosed parcel?

Witness—There was no cover on it, there was only a piece of twine around the parcel and I could see what they were. I took them when I came back and rolled them up myself and brought them back to New York. [Circular shown witness with the British Coat of Arms upon it, a copy of which is already published. See copy on page 15.] That is the circular I saw.

Q. You went back to New York after that? A. Yes, sir.

Q. Did you see Howe? A. Yes, sir.

Q. Were you there when Mr. Strobel came? A. Yes, sir; I saw Mr. Strobel.

Q. did you give him any money?

A. No, sir, not to Mr. Strobel. At the request of Mr. Howe, I gave $100 to Mr. Hertz.

Q. To Mr. Strobel and him together? A. Yes, sir.

Q. At the Astor House? A. No, sir, at Delmonico's.

Q. What did Hertz do with the money? A. I do not much mind.

Q Did not you see what he did with it?

A. I saw him get a receipt for part of it from Mr. Strobel—I believe it was $80 00.

Q. Did you see the men that Strobel had there? A. No, sir.

MAGNUS BENAS, affirmed—Examined by Mr. Van Dyke.

Q. Where do you live?

A. No. 218 North Fourth street. My business is pocket-book making. I know Hertz.

Q. State what you saw in reference to these enlistments?

A. I got acquainted with Hertz about eight days before he was arrested. I was down at the wharf as the steamer Sanford left, and I was in his office on the same day and afterwards. I got in his employ about a week afterwards.

Q. You got in Hertz's office? A. Yes, sir, in Mr. Hertz's employ.

Q. About eight days before he was arrested?

A. No, sir, after he was arrested—about the 2d of April.

Q. Still in the same office? A. Yes, sir.

Q. Well, then, what did he engage you for?

A. Well, for transacting his business. It was a commission office.

Q. Did you write that card to Halifax at his request?

A. I wrote that card on my own account. It was for an acquaintance of mine, and I wrote it on my own account.

Q. Do you know anything about the office for recruiting, and Mr. Hertz's connection with it?

A. Well, I heard something, but I did not know anything before.

Q. Did he tell you anything about the office kept by the Baron Von Schwatzenhorn. State what you know about Hertz engaging Von Schwatzenhorn?

A. There was a conversation between the Baron Von Schwatzenhorn and Hertz.

By Mr. Cuyler. Q. In your presence?

A. Yes, sir, they met at 68 South Third street, and agreed that Von Schwatzenhorn should see to getting the men, and Hertz procured the vessels to bring them to Halifax, and accordingly Hertz sent me at different times to the office of the English Consul to enquire about vessels loading for Halifax. Merchant vessels, mostly schooners.

Q. That was for the men whom Baron Von Schwatzenhorn was getting?

A. Yes, sir. I was about four or five times in the office and got about five vessels, two of the vessels I recollect the names of, they were the "Gold Hunter" and "Boneita."

Q. Were men sent in these vessels?

A. Yes, sir, they were sailing vessels, direct for Halifax.

Q. Were they English vessels? A. Yes, sir, I guess so; I do not know sure.

Q. Did you see any of the vessels? A. Yes, sir, I saw them all.

Q. Did you see the names of any of them? A. Yes, sir, I told you.

Q. Where did they hail from? A. I do not know.

Q. How many men did you ever see off in a vessel?

A. I saw them off, once four men and another time six, but never more than six were in one vessel.

Q. What was the character of these vessels? A. They were schooners.

Q. Was it at the request of Hertz that you went to the British Consuls to know when merchant vessels were going to sail for the purpose of sending the men Baron Von Schwartzenhorn had engaged? A. Yes, sir.

Q. Where did the Baron Von Schwartzenhorn keep his office?

A. He lived at the corner of Fourth and Brown.

Q. This was after the arrest of Hertz? A. Yes, sir, it was.

Q. Do you know at whose request the Baron commenced to engage men?

A. I do not know.

Q. (Card shown witness, a translation of which is published at bottom of page 44 ante.) Look at the bottom of that card and say if you have not stated at whose request you wrote it?

A. I did it of my own accord, and wrote that down to let Mr. Strobel know that I was in the employ of Hertz.

Q. Is it not written at the request of Mr. Hertz, at the bottom?

A. I wrote it so, but it was on my own account.

Q. Do you know Schuminski?

A. Yes, sir, I saw him. He was not engaged at the request of Mr. Hertz, but of the Baron Von Schwatzenhorn. He was with the Baron.

Q. They acted together? A. Yes, sir.

Q. Do you know how many men the Baron got altogether?

A. No, sir, I do not know, I guess about twenty or twenty-six, I cannot tell for sure.

Q. Did Hertz ever tell you how many men he sent altogether? A. No, sir.

Cross-Examined by Mr. Remak.

Q. Mr. Baron Von Schwatzenhorn was not requested then by Mr. Hertz to send men? A. No, sir.

Q. Do you know Winsor and other gentlemen who procured the vessels?

A. I do not know anything about it.

Q. Was Mr. Hertz exactly in the position of Winsor and other gentlemen who had vessels at their disposal?

A. I do not know. Mr. Hertz sent me to the English Consul to inquire about vessels loading for Halifax—that is all I know. I know they were for sending the men to Halifax that the Baron Von Schwatzenhorn procured.

Q. Did you not know that the Baron was indicted in this Court?

A. Yes, sir, I knew that.

By Mr. Van Dyke.

Q. Do you know where he is now? A. In Halifax.

Q. What is he doing? A. I do not know.

CHARLES BURGTHAL, sworn—This witness was a German, who could not speak English, and Mr. Theodore H. Oehlschlager was sworn as interpreter.

Examined by Mr. Van Dyke.

Q. Where are you from? A. From Vienna.

Q. In what service have you been? A. Military.

Q. In what military service? A. The Austrian.

Q. What official position did you hold?

A. I was a Major and Lieutenant-Colonel in the Engineer service.

Q. When did you come to this country? A. The 28th of September, 1848.

Q. Where had you been located with your command before you came here?

A. In Hungary.

Q. At what place? A. At Komorn.

Q. Did you at any time see Mr. Crampton in reference to recruiting for the British government? A. Yes, sir.

Q. State when you first saw him, and how you happened to go to see him

A. I was engaged as Superintendent on the Panama Railroad, but being sick, returned to the United States and went to see Mr. Marcy and Mr. Cushing and other gentlemen, and when in Washington became acquainted with Captain Strobel. I knew Mr. Strobel previous to this, five years before. Mr. Strobel informed me that Mr. Crampton was seeking officers for this business. In the end of February I went out with Mr. Strobel to see Mr. Crampton; I went to Mr. Crampton's with Mr. Strobel, he was not at home; he was at a dinner party at Mr. Marcy's; I left my card there, and went to Baltimore to my family; four or five days afterwards I received a telegraphic despatch from Mr. Crampton, requesting me to return to Washington; the next day I did so; I went over there, and was with Mr. Crampton, and held a conversation of over an hour with him, relative to this recruiting business; he made me a proposition, requesting me to enter the regiment as Colonel; I observed to him, that I would not enter the service unless there was a perfect security, as to my getting a commission as I did not wish again to enter the service of a despotic power.

Q. What do you mean by "perfect security?"

A. I mean a commission from the Queen, as no one else was able to give a commission.

Q. What else occurred?

A. Then I came to Philadelphia in the beginning of March, and saw Strobel here; I also made the acquaintance of Mr. Hertz; about the 10th or 12th of March, Mr. Howe came here and visited me.

Q. Did Mr. Howe call on you of his own accord?

A. He looked for me and visited me of his own accord, having heard from Mr. Rumberg that I was here.

Q. State the conversation between Mr. Howe and you?

A. He made the same proposition. He stated that he had officers here, in Baltimore, in New York, in Chicago, and in different parts of the country. He then told me that he would obtain for me a commission; that he had authority from Mr. Crampton so to do; I refused the offer, having other employment here at the time. Afterwards, Mr. Howe visited me with two or three other gentlemen, and invited me to Jones' Hotel. I went to him and dined with him and these other gentlemen. I informed him at dinner of my opinion in relation to this recruiting business, that it had been forbidden in the U. S. He showed me two placards, one in German and the other in English, and also a journey card and ticket, and told me that he did not think he could be laid hold of in the matter.

Mr. Remak—He said that he felt certain that nothing could be done to him?

A. That nothing could be done against him in the United States. He also requested me, if I came to New York, to visit him at Delmonico's Hotel. I went there, but did not meddle any further in the matter, nor go to see him.

Q. Did you at any time see Mr. Hertz, or have any conversation with him?

A. I saw Mr. Hertz very often when I came to see Mr. Strobel.

Q. Where at? Mr. Hertz's office in Third street.

Q. What was he doing?

A. I do not know; he was writing; people came there for him, they came to see him.

Q. Did Hertz have any conversation with you?

A. I said nothing to him, I simply saluted him.

Q. Had he any conversation with you in reference to recruiting men?

A. Yes, sir, I think he spoke of it.

Q. What did he say?

A. He said that he sent people to Halifax, but not for military service, that he had a commission to do so.

Q. What did he send them for?

A. I had my opinions as to why they were sent there, but I did not tell him, nor did he tell me.

WILLIAM BUDD, sworn—Examined by Mr. Van Dyke.

Q. Are you acquainted with Mr. Hertz? A. Since the 13th of March.

Q. Where were you made acquainted with him?

A. I was introduced to him as the agent in this city for the recruiting for the "foreign legion."

Q. State what took place?

Judge Kane—What was the character of the introduction?

Witness—He was introduced to me as the agent, by my friend, Mr. Strobel. We went down there one morning, and after some preliminary conversation between Hertz and Strobel, he introduced me to him. Strobel remained in the outside room, and he asked me whether I would go to Halifax; he said that he was agent of the foreign legion, and asked me whether I had called to receive information about it; I told him I had; he then told me that commissions were to be issued for men, who would go on there, and he supposed that I would get one; I then gave him my address, and he requested me to call again, and he would let me know when the first expedition started, to stop in every day and see him, and see what was going on. I did so. He engaged me to go on there, for the purpose of obtaining a commission.

Q. State the conversation fully, that occurred between him and you, in reference to your going there?

A. Well, we had a great many conversations; almost every day we talked about it.

Q. When did you first agree with him to go to Halifax, for the purpose of obtaining a commission? State the conversation that then took place.

A. I did not agree on the first interview, I told him I would think about it.

Q. What did he say at that interview? A. He promised me a commission.

Q. Did he ask you to go with that view? A. Yes, sir, he did.

Q. And you told him you would think about it? A. Yes, sir.

Q. What next took place?

A. After two or three days, he asked me if I had made up my mind; I told him yes, I would go to Halifax and see what took place when I got there. He then intended to send me with Capt. Strobel, but I concluded not to go; there was not men enough going, and I preferred to hear from him and hear how he got on when he got there. It was on a Sunday when he started, and I did not go with him.

Q. What did you do from the Sunday up to the time you started?

A. On Monday, Hertz was in New York.

Q. Who had charge of the office while he was gone to New York?

A. Bosschart and myself were there, and we took several persons down who came in there.

Q. Did you do that at the request of Hertz? A. We did at his request.

Q. Who was Bosschart acting for? A. I understood he was acting for Hertz.

Q. Did you raise any men in that time? A. About 25 or 30.

Q. What did you do with them?

A. The day before we started they all came there, and we gave them tickets and told them to be down at the New York boat next morning. I went down there after I received instructions from Hertz where to go to in New York.

Q. What instructions did you receive from him?

A. He told me to go to Delmonico's Hotel, and call and see Bucknell. We started, and did not get any further than the Navy Yard when we were arrested.

Q. You took the men? A. I did not take them, they were down on the boat.

Q. They were in your command?

A. I had no real command. I was considered as leader of the party.

Q. By arrangement with Hertz? A. Yes, sir.

Q. How many had you?

A. About 30 when we started. I only saw 12 when the arrest was made. I think

there was 30. It was on a Wednesday. I am not sure whether it was on Wednesday following the Sunday that Strobel went on with men.

Q. Did you see the men go on the boat?

A. I did, sir, and told several of them to hurry up or they would lose their passage. I took the tickets from them after we had started down the river.

Q. What boat was you on board?

A. The Delaware or Sandford—one of the New York line. The Delaware, I think.

Q. (Tickets shown witness same as copied on page 35.) State whether those are the tickets used?

A. I do not know; tickets like those the men had, and after they got on the boat the Captain told me to muster them and take them up.

Q. They got those tickets from Mr. Hertz and yourself you have said, where did you get the tickets you gave them?

A. From Mr. Hertz, and when the tickets were taken from them I gave them other tickets which the clerk of the boat gave me.

Q. Who settled with the boat for those tickets? A. I do not know.

Q. You started in the boat and were going down the river? A. Yes, sir.

Q. What happened then?

A. When I mustered them and found there was so few, I was looking for the rest, when Mr. Jenkins came up to me and told me he would like to see me, that he had a warrant for me, and the Marshal would be up alongside in a steamboat in a few minutss; I told him very well, they searched me for papers and brought me up to the office; I do not recollect the names of any of the company.

Q. Had you a muster roll? A. I had.

Q. Where is it? A. I rather think I tore it up when I was arrested.

Q. (Book containing the names of the men who enlisted at Hertz's office shown.) Do you know that? A. Yes, sir.

Q. What is it?

A. I cannot say exactly whether it is part of Strobel's company or mine; I rather think it is mine; several of the men who had enlisted to go with Strobel's company, did not go with him, but went with me, and this list is part of Strobel's and part of mine, I think; I do not know whose writing it is in; Mr. Hertz gave me the list, and I supposed he wrote it; I have seen the book in Mr. Hertz's office.

Q. (Paper shown witness containing a list of names.) Do you know if that was the list of your company?

A. I think it was, to best of my knowledge, and I think I made those marks on it. I had no list besides this.

Q. (Another paper shown witness similar to the first.) Is that a copy of this?

A. Yes, sir, I expect so.

Mr. Van Dyke here offered in evidence the list of names which the witness identified as containing the names of the members of this company, from which some of the bills had been drawn. The list is read in evidence.

Q. Do you recollect the names of James Johnson or Peter Muhn? A. I do not.

Q. Do you recollect Mr. Bucknell's coming into the office with the handbill?

A. Yes, sir.

Q. Do you know whether Mr. Hertz took them, and what he did with them. (Bill containing the British Coat of Arms shown witness, same as copied on page ante 15.) Is that the bill? A. Yes, sir.

Q. What did Mr. Hertz do with them?

A. Several were stuck up around the office and on the outside, and several were sent to be distributed. I understood they were sent around to the Lager Beer Saloons.

Q. What became of the bills?

A. Mr. Bucknell took some away, and the rest were burned.

Q. How did that happen?

A. I went in one morning and saw some excitement, they were shoving the papers in the stove, and they told me that Mr. Bucknell had taken the rest of them away with him.

Q. Did you ever see Mr. Perkins in the office? A. No, sir.

Q. What did Mr. Hertz tell you was to be the destination of the men you took?

A. Halifax.

Q. What were they to do there?

A. To enlist in the foreign legion if they were found physically competent.

Q. Was there a physician at the office for the purpose of examining men that came there? A. No, sir.

Q. Do you know what he was paid for getting these men?

A. I do not know the exact agreement.

Q. Did you ever see any telegraphing or letters written by Mr. Hertz?

A. Yes, sir.

Q. State what the telegraph contained?

A. I saw him write a telegraph dispatch to Bucknell; he told him to wait.

Q. Did you see any letters written by Hertz? A. Yes, sir.

Q. State what it contained?

Mr. Cuyler objected.

Q. To whom was the letter addressed? A. To Mr. Bucknell.

MR. BUCKNELL was here re-called.

Q. Have you got that letter written by Mr. Hertz?

A. I never remember his sending one.

Q. Did you ever receive the telegraphic dispatch he sent you?

A. Not that I can remember.

MR. BUDD'S examination continued.

Q. State what was in that letter?

Mr. Cuyler objected.

Q. Where did you last see the letter? A. On Mr. Hertz's desk.

Q. Who was at the desk at the time?

A. Mr. Hertz himself, he was writing at the time.

Q. Have you seen it since? A. No, sir.

Q. Do you know whether it was ever put in the Post Office? A. No, sir.

By Mr. Cuyler—Have you any knowledge of it except that it was a simple sheet of paper on which he was writing?

A. Yes, sir, he informed me of the nature of it and read part of it to me.

Q. By Mr. Van Dyke—Did he give that letter to you after it was written? A. No, sir.

Q. You have no knowledge of what became of it? A. No, sir.

Q. Go on and state to the best of your knowledge and recollection what it was that Mr. Hertz wrote on that sheet of paper?

A. Mr. Hertz was writing and I was waiting in the outer office, he asked me how I spelt my name and told me that he was writing about me, and stating that I was coming on next day; I then went around to where he was writing, and he again

asked me how I spelt my name, and I looked over his shoulder and saw he was writing to the agent in New York, that I was coming on with men, and he hoped, he wrote, that he would keep his word and send him on money at the rate of $4 for superior brands, and $2 for inferior brands.

Q. What did he mean by superior and inferior brands; did he give you to understand?

A. No, sir, he did not. I understood this perfectly. It meant men.

Q. Did you see him writing any telegraphic dispatch?

A. I saw him write a telegraph asking whether I should come on next day or not, I forget who took it to the office.

Q. Was there anything in it besides that?

A. He did not use my name; he asked whether he should send 20 or 30 parcels next day.

Q. Do you know whether he got an answer? A. Yes, sir.

Q. What was the answer?

A. "Yes." It was signed "B" I think it was "yes, all right." It was in the affirmative. He then told me to get ready to go next morning.

Q. Did he say anything to you in reference to getting directions in New York as to what to do?

A. He told me I would get directions for money or assistance from the agent at Delmonico's Hotel to proceed on to Halifax.

Q. Did he mention the name of the person there?

A. He asked me whether I would know Bucknell again, and I told him yes.

Q. Did Hertz give you any money before you left? A. No, sir.

Q. Have you had any conversation with him after your arrest? A. Oh, yes!

Q. What was it? A. He said so much I cannot state it.

Q. State what he said in reference to this recruiting business after you were arrested?

A. After they had arrested me, the Marshal went on shore and arrested Hertz, at his office, and they kept us in the Delaware a couple of hours until they had preparations made for our reception. The Deputy Marshal kept the boat out and when we came up to the office I found Mr. Hertz here. He said "all right, I will bail you out," and I did not think any thing more about it until I was committed.

Q. Did he say anything about remaining quiet?

A. Not then, not until the latter part, when I had some difficulty in procuring bail.

Q. What did he say to you then?

A. He said keep quiet, I will have you out; he afterwards said something about the matter, it was to keep my mouth shut, it would be all right; I would be well paid for it.

Cross-examined by Mr. Cuyler.

Q. When was it you were arrested?

A. I cannot exactly remember the day, but it is very well known; I think it was in the latter part of March.

Q. Was there any previous communication between yourself and the United States officers before the arrest?

A. None whatever.

Q. This arrest was not then in consequence of any conversation between yourself and the authorities, directly or indirectly?

A. No, sir.

Q. Your arrest was a complete surprise to yourself?

A. Yes, sir, to me, I was totally unprepared for it.

Q. Where did the conversation take place when he told you to keep your mouth shut?

A. Once down in the prison, and once in the Commissioner's office.

Q. By Mr. Remak. In what country were you born?

A. I decline answering that question, as it implicates myself. I have been advised to decline answering it.

Q. By Mr. Van Dyke. Did you ever state under oath where you were born?

A. Never.

Q. By Mr. Cuyler. Do I undertand you to say distinctly that to answer the question, where you were born, would involve you in a criminal prosecution?

A. No, sir, but to answer whether I am a citizen or not, would involve me in a prosecution.

Q. By Mr. Remak. Have you not been arrested and held to bail before the United States Commissioner, Heazlitt, on the charge of having retained and hired men for the foreign service?

A. I believe so; that is the charge on which I was arrested and held to bail for a further hearing.

Q. And was you not on the 28th of March, 1855, a defendant before Commissioner Heazlitt; that was the day you were arrested? A. Yes, sir.

Q. Did you not turn State's evidence on the 28th of March, against Hertz?

A. I believe that was the first day I gave evidence.

Q. Did you not say before the United States Commissioner, that Hertz had promised you money in case you would keep your mouth shut?

A. I did so at that time.

Q. Did you not receive that money because you were in very destitute circumstances? A. No, sir, I did not.

Q. Had you any money in your pocket the time you were in prison? A. I had.

Q. How much? I had sufficient.

Q. You stated in your examination in chief, that Strobel introduced you to Hertz, as an agent of the English government, why did you not say so before the United States Commissioner?

A. I said so; I do not know whether I used the exact words, but to the same sense.

Q. It is here in the published report of the proceedings, that you said:—"I was introduced to Hertz about the 15th of March, by Mr. Strobel; was introduced to Hertz as the person who would give me all the information about organizing the foreign legion in Nova Scotia." Did you not say that? A. Yes, sir.

Q. You said to-day, that you was introduced to him as the agent of the English government? A. For that purpose.

Q. Did you or did you not state before the United States Commissioner, that Hertz was introduced to you as the agent for the English government; you say now that he was introduced to you as the agent of the English government?

A. He was introduced to me as agent appointed in this city by the government for whom the foreign legion was to be raised.

Q. You said that he was introduced to you there as the person who gave the information? A. In that capacity.

Q. You did not employ the word agent? A. I do not recollect it.

Q. Did you not say before the United States Commissioner that it was left optional to any person coming into the office whether he would go to Halifax or not, or what he would do there?

A. I said that of course, it was left optional with the recruits to go to Halifax, but after they got there force was to be used to induce them to enlist.

Q. Did you then state to the United States Commissioner that Hertz was the agent to enlist those persons for foreign service? A. I did not say so.

Q. Did you not state to the United States Commissioner that Hertz sent men to Halifax, and it was immaterial to him what they were going to do there?

A. I do recollect that Hertz sent them to Halifax for the purpose of being enlisted in the foreign legion, of course he had nothing to do with them after they got there.

Q. Do you remember the 31st of March, when Richard Vaux was your counsel, and when Benjamin Rush made that great speech, was not you a defendant at the beginning of that period? A. I do not know.

Mr. Van Dyke. There is no dispute about it. He was a defendant, and was discharged by the Commissioner by my direction.

Mr. Remak—It is for the Jury to know; I desire to know, whether or not the witness, on the 31st of March, was a defendant, and had made up his mind to turn State's evidence at the time?

Mr. Van Dyke—I discharged him for the purpose of using him as a witness.

Mr. Remak—I desire the answer of the witness.

Witness—I think I made up my mind; I think so, I am not positive.

Q. Did not Mr. Hertz say to you, that he had no power whatever to give commissions?

A. He said he had not power to issue commissions here.

Q. He said he had no power to give any commissions? A. Here.

Q. Do you believe he had any power to do so? A. I really do not know.

Q. Was Mr. Strobel present when you conversed with Mr. Hertz?

A. On some occasions. On the first occasion he was present during only the first part of the conversation.

Q. Who else was present? A. No person.

Q. Did not you desire to see Mr. Hertz yourself?

A. After I was informed that he was the general agent of the English government, I did.

Q. Had you a desire to enlist in foreign service?

A. No, sir, I was not going to enlist, I was to receive a commission, not to enlist.

Q. And you say Hertz did not promise you any commission at all?

A. I did not say so. I said he promised me that the fact of my going on there would insure me a commission when I got there.

Q. He had not power to give one? A. Not here.

Q. From whom did you receive tickets? A. From Mr. Hertz.

Q. What were the tickets for?

A. To give to those men I was going to take on, to get their passage. Nothing else was given to the men.

Q. You state, I think, that able bodied men could be attested in Halifax, if they proved physically competent? A. Yes, sir.

Q. Did you hear Mr. Hertz say at any time that "physically competent" men would be received at Halifax?

A. No, sir, not these exact words; he has said if they were sound, and has asked me if they were all right.

Q. Why did you not say that before the U. S. Commissioner?

A. I suppose I was not asked; I do not know the reason I did not.

Q. Did not your examination before the U. S. Commissioner last for some time, for two hours?

A. I do not know; it lasted for some time; I could not exactly say what time.

Q. Was not you asked at the time all you knew about it?

A. I was, but I may have forgotten some particulars; I had heard so much that I could not remember exactly all.

Q. How comes it that you remember it now and not then?

A. There is some conversation which I related then that I cannot remember now.

Q. Who have you had conversations with in the meantime about this proceeding, that is, from the 31st of March to this 23d of September?

A. With a great many persons with whom I am acquainted, I merely talked the matter over.

Q. Was not you very partial to carrying on the war in Europe against Russia, and for that reason you wanted a commission?

A. I do not know, sir; I never remember expressing my sentiments; I wanted to go there to have a fight, and I did not care which side I went on.

Q. Have you not changed since that time in regard to the war in Europe?

A. No, sir, not in the least.

Q. You are now on the Russian side? A. No, sir, I am not now on any side.

Mr. Van Dyke here stated, that as the attorney for the defence (Mr. Remak) had seen fit, in order to impeach the testimony of Mr. Budd, to read a part of his testimony before the U. S. Commissioner, in justice to Mr. Budd, he deemed it proper, in corroboration of the testimony of the witness, to read the whole of the testimony before the commissioner, that the jury might see that there is no discrepancy in the two statements. (Mr. Budd's testimony before U. S. Commissioner Heazlitt, is here read by Mr. V.)

JOHN JACOB BOSSCHART, sworn—Examined by Mr. Van Dyke.

Q. Do you know Mr. Hertz? A. Yes, sir.

Q. How long have you been acquainted with him?

A. I guess I got acquainted with him last March.

Q. Where did you first get acquainted with him?

A. I do not know exactly whether I got acquainted with him at my own house or first at his office, No. 68 South Third street. I think it was at my house. I was in the habit of attending his office during the month of March.

Q. State all that took place between you and him, and between him and other persons in relation to enlisting for the Foreign Legion?

A. I was first made acquainted with the business by Mr. Leob. He told me that Mr. Hertz had entered into the business of recruiting for the British foreign legion. Sometime afterwards, Dr. Biell, who was boarding with me at the time, told me about it, and I soon after saw an advertisement in the *German Democrat*, *Pennsylvanian* and *Ledger*, that they wanted men for the British foreign legion, that every one who choose to go to No. 68 South Third street, would learn the particulars. Dr. Biell and Asch-

enfeld went down there and I went too, to see what was going on; I saw the officers and men going there; and spoke to Mr. Hertz about this foreign legion, and about their pay and commissions. Some of them signed their names in the book, and some of them were taken down by Hertz himself.

Q. What was the character of the conversation which took place between Mr. Hertz and the men when they came up there?

A. The men came in and generally asked if that was the recruiting office, or office to enlist men for the Foreign Legion, the reply generally was that that was no recruiting office, and that they could not be enlisted there, but if they choose to go to Halifax, they might be enlisted there; then he showed them the handbills which stated that $30 bounty was given, and $8 a month to the men; he said that it was in his power to give them a commission.

Q. (The handbill shown witness containing British Coat of Arms, already published. see page ante 15.] Is this the kind of handbill which he showed them? A. Yes, sir.

Q. What did the men say they wanted to go to Halifax for?

A. They wanted to go to Halifax to serve in the foreign legion, that is, the men who came to the office.

Q. Did he engage them to go there for that purpose?

A. As I understood, he engaged them to go for that purpose.

Q. To enlist when they got there? A. Yes, sir.

Q. And they told him that that was their intention when they got there?

A. Yes, sir, they told him that.

Q. How long were you with him in that office?

A. I was there every day from the beginning of the business until we were arrested.

Q. Do you recollect any physician who examined the men?

A. Well, I recollect that Dr. Biell examined some of them.

Q. Do you know what Mr. Hertz was to get for sending on these men?

A. No, sir.

Q. Do you know who employed Mr. Hertz to do this business?

A. I was told Mr. Howe employed him.

Q. Who told you? A. I do not recollect who told me.

Q. Do you recollect Mr. Hertz ever saying anything about it?

A. I heard Hertz talk frequently about Howe, but cannot recollect distinctly that he said that Howe employed him.

Q. Did Hertz, in speaking of the manner in which he was employed to conduct this business, speak of Howe as being connected with his being employed? A. Yes sir.

Q. Did Mr. Hertz ever say anything to you about Mr. Crampton having employed him?

A. He told me he had seen Mr. Crampton on the subject.

Q. What did he say had taken place between him and Mr. Crampton?

A. He did not say what had taken place between him and Mr. Crampton—not that I recollect.

Q. You recollect the departure of Captain Strobel and his company? A. Yes, sir.

Q. Were you at the wharf at the time? A. Yes, sir.

Q. Was Hertz there? A. Yes, sir.

Q. To assist in getting them off? A. Yes, sir.

Q. Did he engage that company to go to Halifax? A. Yes, sir.

Q. For what purpose?

A. For the purpose of enlisting in the Foreign Legion as I understood.

Q. Do you know whether he went to New York to make arrangements for sending that company from New York to Boston?

A. That company started from here on Sunday morning, at 10 o'clock, and Mr. Hertz went to New York on Sunday night, in the half-past 1 o'clock train, to make arrangements to see that the men got off from New York; he returned to this city on Monday night or Tuesday morning; I saw him on Tuesday morning again in the office.

Q. While he was away who had charge of the office?

A. I had charge of the office.

Q. Were you directed to conduct the business for him while he was away?

A. Yes, sir.

Q. And those men who were enlisted during the absence of Hertz on Monday, were engaged by you at the direction of Hertz?

A. Yes, sir; I took the names on a piece of paper as directed, and told the men Hertz would be back on Tuesday, and find a vessel to bring them on to Halifax.

Q. Why did you not take the names in the book during his absence?

A. I guess I was directed by Hertz to take them down on the paper.

Q. (Paper shown witness.) Is that in your writing?

A. I could not say whose writing it is, some of it is written by me, two of the names are written by me, Robert Korn and Peter Sable; it is the list which was kept in the office, that list contained the names of those who engaged to go.

Q. (Another paper shown.) Is that another list of the names kept in the office?

A. Yes, sir; there is none of my writing on that.

Q. (Book containing the names of those who enlisted, which has already been partly published, shown.) Look at that book and say whether you see any of Hertz's writing in it?

A. The names on the first page, I think are all written by the men. On the second page also, and on the third page some of them are written by Hertz.

Q. (List of officers in the back of the book shown witness.) What is that?

A. That is the list of the officers. It is in Mr. Hertz's writing. It contains the names of Strobel, Esson, Shumann, Biel, Lisepenny, Budd, Aschenfeld, Riter and Anglere. I know those men engaged to go as officers—some of them as non-commissioned officers, and some of them as commissioned officers.

Q. Do you know what pay Mr. Hertz got for this? A. No, sir.

Q. (Tickets shown.) Did you see many of this kind of tickets about the office?

A. Yes, sir, there was a great many of those tickets.

Q. Did the men who went in Strobel's company get any tickets?

A. I guess so. I am not certain.

Q. (Another book shown.) Do you know that book?

A. I saw that book once there.

Q. Whose writing is that in it?

A. I guess it is the writing of a man in the employ of Mr. Hertz, Mr. Holm. I do not know exactly, but I think so.

Book read in evidence, from which it appeared that Hertz was debited with $750 and credited by cash, with $300, and then charged with 758 tickets.

Q. Do you know who he got that cash from? A. No, sir.

Q. (Some handbills were shown witness, same as on page 15, ante.) How many of those handbills did you see about there?

A. I could not tell how many. I saw a package of them, Mr. Bucknell brough them.

Q. Were any of them posted about? A. Yes, sir.

Q. By whom? A. I cannot tell.

Q. Who directed it to be done? A. Mr. Hertz.

Q. Do you know who paid the German Demoerat for the advertisement of this call?

A. Mr. Hertz did.

Q. Where did he pay? A. In his office.

Q. Who called for it? A. The clerk of the Demoerat, Mr. Morris.

Q. Did you see him pay? A. I saw him pay.

Q. You were arrested at the office? A. Yes, sir.

Q. With Mr. Hertz on the morning that the steamer started? A. Yes, sir.

Q. Was it before or after the men were arrested? A. On the very same day.

Q. It might have been earlier in the day or later in the day?

A. It was after the men had started. Mr. Budd was put in command of them.

Q. Do you recollect the list of the names of those who went with Mr. Budd?

A. I think that is the last list shown me but I am not sure of it.

Q. Do you know whether all those who went with Budd were engaged by Hertz to go with him?

A. They were engaged by Hertz to go to Halifax.

The witness was here questioned by Judge Kane as to the larger book which he had identified as containing a list of the names of persons enlisted.

Q. Was anything written in this book on the page preceding that containing the name?

A. No, sir, it is a list of officers, with their rank.

Q. It has been cut out? A. Yes, sir, the list of officers is cut out.

Q. It was the list of officers with their rank?

A. Yes, sir, they put their names down, and the rank they were to hold there was put down by Hertz. I mean military rank.

Q. That was all on the page cut out?

A. Yes, sir; there are two leaves cut out; one was for the commissioned officers and one for the non-commissioned officers; I recollect there is a list of officers written in the back of the book after they were cut out, and that was just a memorandum.

Dr. PETER JOSEPH REUSS, sworn—Examined by Mr. Van Dyke.

Q. You are a physician? A. Yes, sir.

Q. What country do you belong to?

A. Hesse; I have been in this country this 26th of September is four years.

Q. Will you state whether you came to Philadelphia in March or April last, and for what purpose?

A. I came to Philadelphia for the purpose of going to Halifax; I was to go to New York and thence to Montreal; I came here induced by a proclamation in the Philadelphia German Democrat; I went through here to New York, and from New York to Halifax.

Q. Did you stop at Hertz's here? A. No, sir.

Q. Why not? Mr. Remak objected.

Q. Had Hertz been arrested at the time you arrived here?

A. I do not know that, because I did not stop in Philadelphia ; I went to New York and Montreal, and then to Boston, and from Boston to Halifax in the Africa.

Q. Is that the steamer ? A. No, sir, the bark Africa.

Q. When you got to Halifax, where did you go, and who did you see ?

A. I went to the Provincial Building, and spoke with Mr. Wilkins and Mr. Bruce M'Donald.

Mr. Remak—Be good enough to bring this home to Hertz.

Q. By Mr. Van Dyke. Have you at any time had any conversation with Hertz, before or after that?

A. No, sir.

Q. When you arrived in Halifax, state what you did?

A. I went to the Provincial Building and met Wilkins, the First Secretary of Nova Scotia, and the same day afterward I spoke with Sir Gaspard lè Marchant, the Governor of Nova Scotia. I sent some days before a letter in the French language to Sir Gaspard lè Marchant, and told him what I came to Halifax for—that I was induced by his proclamation. I had sent a man before to No. 68 South Third street, Philadelphia, to see what the business was, because it was in the proclamation that physicians and surgeons would be engaged with good pay, and this man came back and told me that the whole business had been stopped by the United States Attorney, and that he had spoken with one man on the subject, but he did not tell me his name and he told him that the business was all right, to go to Halifax, and I would be engaged as physician for the regiment, I wrote the letter but did not receive any answer, because the business was stopped. In Halifax, the Governor told me that I could not be engaged unless I raised men, I refused that because I told him I did not come for that business, I came to be engaged as Doctor, and not as Recruiting officer. Mr. Wilkins called on me some time afterwards, and told me that if I raised men in the United States, I should be engaged, but not if I refused, and then I was obliged to go, because the Governor told me I could not be engaged without this, then I was employed as officer of recruiting, and went with Capt. Strobel to the States, and was sent by him to Detroit in Michigan.

Q. Did you hear any conversation at any time between certain gentlemen when Mr. Crampton was present ?

A. Yes, sir, in Halifax, on the 15th of May, we met Mr. Crampton.

Q. Who told you to meet him ?

A. Strobel called on me on the 14th of May, and told me to come to the Provincial Building, Halifax, and meet Mr. Crampton and Sir Gaspard lè Marchant, and I went, and found there Lieutenant Preston and Strobel, and some other officers.

Q. What took place in that conversation ?

A. That conversation was that we should go to the United States and raise troops.

Q. Who told you to do that ?

A. Mr. Crampton and Sir Gaspard lè Marchant, with Mr. Strobel.

Q. They said that to Strobel ?

A. Yes, sir, and that he would go Canada and the States and arrange this so that we could raise troops without danger.

Q. What plan did they give you to raise these troops without danger?

A. That is what they spoke to Capt. Strobel. I did not hear every word, but heard them tell him that we should go to the States and arrange the business, so that we cannot be caught by the United States officers.

Q. They told Capt. Strobel that he should go to the States and arrange business so as not to be caught by the United States officers?

A. Yes, sir.

Q. Who told Strobel that?

A. Mr. Crampton, he made the arrangements with Strobel and spoke that to Sir Gaspard lè Marchant.

Q. What plan did Mr. Crampton say you were to adopt in the States to prevent being caught by the officers?

A. That we should do it very still, not to work too openly, and that we should engage runners and any other men who would bring men to the depots, and from these depots we were to send them to Canada West to the barracks.

Q. What kind of runners did he speak of your engaging?

A. Boarding house runners, emigration runners, commission house runners, and every kind of runners, I believe.

Q. Did he say anything in reference to what you were to say to these men?

A. That every man was to receive $30, and $5 was to be taken for payment of expense; that is what I learned from Strobel afterwards, that is, what was promised the men.

Q. Was anything said about that in conversation with Mr. Crampton?

A. No, sir, not to me—it was spoken to Mr. Strobel.

Q. He told Strobel they were to have $30?

A. Yes, sir, and $8 a month pay—cash. The bounty was given for enlisting. Each runner should receive $5 a head for enlistments.

Q. That was the pay of the runner?

A. Yes, sir, if the man was capable of being enlisted, not if the man was refused.

Q. Were they to get any pay for men refused? A. No, sir.

Q. Then it was only for the men who arrived at the barracks and got enlisted that they were paid $4 a head for? A. Yes, sir.

Q. Did you receive any money at that time for this purpose?

A. On the 14th of May I received from Captain Strobel $220.

Q. Where did he get it from?

A. Out of the Provincial Building. Mr. Bruce McDonald gave him the money in my presence. He is the clerk of Mr. Wilkins, or second Secretary, I do not know which it is.

Q. What were you to do with that $220?

A. To run to the United States for these men; that was the pay for half a month for myself and one Sergeant.

Q. Did you see Mr. Crampton after that?

A. We left the next day, the 19th of May, and we came to Windsor in Nova Scotia, and when we got there we took the steamer to St. Johns.

Q. Where did you next meet Mr. Crampton?

A. I saw him in Windsor, and saw him on the ship to St. Johns, and next day at Portland. At Windsor, we took the Creole for St. Johns, and I saw Mr. Crampton in the presence of Lieutenant Preston and another English officer I do not know his name. He came on board to us there at St. Johns. He talked very often to Captain Strobel, and I went in the same ship with him to Portland.

Q. Did you see him afterwards in Portland?

A. No, sir; I know he left the steamer at Portland.

Q. Where for? A. To go to Montreal.

Q. Who went with him?

A. I believe Captain Strobel, I took the cars for Boston, and from Boston to Niagara Falls.

Q. For this purpose?

A. Yes, sir, at Niagara Falls I expected Strobel with orders how we should go on.

Q. You did not see Crampton afterwards? A. No, sir.

Q. Did you see any written instructions at Halifax?

A. I saw the proclamation. Mr. Wilkins showed me the proclamation for enlisting.

Q. (Proclamation with British Arms on it, shown the witness, same as on page 15 ante.) Is that the one?

A. Yes, sir, I saw that; Mr. Wilkins gave me one of them; he gave it to me in the Provincial building to read it; he was Secretary of Nova Scotia.

Q. What did he say it was for? A. It was for the Foreign Legion.

Q. Did he say that this was the placard under which they were acting?

A. He told me if I should be engaged I should go on to the States and raise troops, but that without this I could not be engaged—saying what Sir Gaspard said to me. I did not see Mr. Howe, he was not in Halifax at that time, I heard very often from him.

Q. Have you at any time seen Mr. Hertz? A. Not in this business.

Q. Did he ever say anything to you about this business?

A. No, sir. When I came with Strobel, I heard from Halifax that we could not be engaged because we did not do anything in getting men.

Q. What do you mean by that?

A. That we did not raise plenty of men and squandered all the money, as they said.

WILLIAM ECKERT, sworn.

This witness, did not speak English and was interpreted by Mr Oehlschlager. Examined by Mr. Van Dyke.

Q. Can You write? A. No, sir. I can read my name; I knew Mr. Hertz, I saw him at No. 68 South Third street.

Q. What did you go there for?

A. I went to enlist; I wanted to enlist in the British army.

Q. Did you enlist?

A. I did not enlist, I went down with a good friend of mine whom I requested to bring me down; he did not go down with me but suggested to me another who went down with me; my friend spoke for me, and said "here is a man who wishes to enter the British Army."

Q. Who did he say that too?

A. Mr. Bosschart and Mr. Budd one of the gentlemen answered, we do not busy ourselves with it, we will merely send you to Halifax, and then if you wish to serve you can serve, and if you wish to work you can work—that the men were enlisted in Halifax. My friend asked how much bounty money in hand was received, and Mr. Budd told him he would receive as bounty $30, and $8 a month. Well, then I asked whether there was nothing paid in advance or immediately, for the few days I would have to remain here, they said they gave nothing; then I went away; they asked me what my name was; I did not write it; Mr. Bosschart wrote it.

Q. Where did he write it? A. On a sheet of paper.

Q. Did you agree to go? A. Yes, sir.

Q. Did you get a ticket for your passage? A. Yes, sir.

Q. Who gave it to you? A. Mr. Hertz.

Q. When was it he gave it to you, the day you sailed or before?

A. On Wednesday afternoon.

Q. Did you engage to go with the intention of enlisting when you got there?

Mr. Remak objected to the question as a leading one.

Judge Kane—The question is too directly indicative of its answer.

Mr. Van Dyke—What was it your intention to do when you got to Halifax?

A. I wanted to go to the Crimea.

Q. In the "foreign legion?"

Mr. Remak objected.

Q. By Mr. Van Dyke—In what capacity did you want to go to the Crimea?

A. As a soldier.

Q. When Mr. Hertz gave you the ticket to go to New York, did he understand that it was your intention to enlist, when you arrived at Halifax?

Mr. Remak objected.

Q. Did Mr. Hertz, at the time he gave you a ticket to go to New York, know that it was your intention to go to Halifax?

Mr. Remak objected. The objection was overruled.

A. Mr. Hertz was not there the first day.

Q. I refer to the time he gave you the ticket; at the time Mr. Hertz gave you the ticket to go to New York, did he know it was your intention to enlist when you arrived at Halifax? A. Mr. Hertz was not there when my friend brought me to the office.

Q. You have said that Mr. Hertz gave you a ticket to go to New York?

A. Yes, sir.

Q. At the time Mr. Hertz gave you this ticket to go to New York, did he know it was your intention to enlist?

A. I do not know whether the other gentleman told me the reason why he wished me to go to New York.

Q. Had you told Mr. Budd your intention?

Mr. Remak objected. The objection was overruled. A. He heard it.

Q. On Monday? A. Yes, sir.

The counsel for the defence, (Mr. Remak,) in the course of the examination of this witness, frequently interrupted, and attempted to correct the interpreter in his interpretation of the language of the witness. On the conclusion of the examination, he called Mr. Oehschlager to the stand, for the purpose of questioning him as to his interpretation of the witness, but on after consideration waived the examination.

AUGUSTUS TITUS, sworn—Examined by Mr. Van Dyke.

Q. Do you know Mr. Hertz? A. Yes, sir.

Q. Which is the person?

Witness (pointing to Hertz.) That is the gentleman sitting there.

Q. State what you know of this matter?

A. Well, I was here in the city without work, and I had no boarding house to go to, as my landlady had told me to leave, so I read of this place in the *Ledger*, and

went down and saw Mr. Budd there, and a couple of other gentlemen; I went in and asked them if this was the place where they enlisted them, and I was told—

Q. Who did you ask that?

A. The gentleman is not here, he was a stranger to me. Mr. Hertz was not there the first time. Q. How long was this before you sailed?

A. It was about 3 o'clock in the afternoon of day before. Then I was told that I could not see the agent now, that he was out, and to come in two hours after that time. I came in, and I saw Mr. Budd, and he asked me my name, and I told him my name, and he wrote it down on a sheet of paper.

Judge Kane. How came he to ask your name?

A. Well, I don't know, without he wanted to put it down.

Q. Did you tell him what you wanted?

A. I asked him if this was the place where they enlisted, and he said no, it was not the place where they enlisted, but the place where they got men to take them to Halifax. Q. For what purpose?

A. For enlisting. I gave them my name. My intention was only to go to New York. I was going to New York and there I was going to leave them.

Q. Did you tell him that was your intention?

A. No, sir, I did not, I kept that to myself.

Q. You were going to out-wit them then, I suppose?

A. Well, I was going to try to, I did not know whether I would succeed.

Q. What did you tell them you intended to do?

A. I told them I intended to go out to Halifax for the purpose of enlisting.

Q. When did you see Hertz?

A. On the morning we sailed I saw him; I went up to the office and asked him what boat I was to go on, and he said that he would be down and make arrangements. There was Mr. Hertz, Mr. Budd, Mr. Bosschart and another gentleman standing talking together, and I went down to the boat and waited until Mr. Hertz came down. I cannot say whether he came with Budd or not. I stopped down at the boat, and before we started Mr. Budd went around the wharf to see whether any one else was off the boat, and when he found there was none there, he came on board, and just before we commenced to start he called us all up. He did not form us into a rank. Sometimes he came to us one by one, and sometimes two or three were collected together and he would ask our names. We told him our names and he marked a cross I think. I won't say it was a cross, it was a mark of his own on the paper. At that time we went down to the Navy Yard, when Marshal Wynkoop catched us. [Laughter.]

Q. Did you get a ticket?

A. Yes, sir, I got a ticket of Mr. Budd, at 68 South Third street. Mr. Hertz was not there at the time. I can read.

Q. (Ticket shown.) Is that the ticket?

A. That is the color of the card (green) I got. On the back was "Pine St. Wharf," and those are the letters ("N. S. R. C.") I have had them in my head from that day to this, and ever will remember them.

Judge Kane—Perhaps you can tell us what those letters mean?

A. No, sir, I cannot. They stand for something I am not able to tell.

Q. You say you can read, (paper shown.) Is that the paper he marked your name on?

A. Well, I cannot say whether it was a whole sheet or half sheet. He had it laying on a table.

Q. Well, your name is on that sheet? A. Yes, sir, my name is on there, No. 9.

Mr. Van Dyke—Is there any cross-examination?

Mr. Cuyler—There is a frankness about this witness that quite disarms cross-examination.

CHARLES WEAVER, sworn. Examined by Mr. Van Dyke.

Q. Do you know Mr. Hertz? A. Yes, sir.

Q. Can you point him out here? A. (Pointing to Hertz.) That is the gentleman.

Q. Did you see him in March, 1855? A. Yes, sir, down in Third street.

Q. What did you go there for?

A. I went down because I heard from some of my friends that they were enlisting soldiers for the British Army there; I went down, it was an hour before they started, and I asked him whether he enlisted men to go into the British Army; he said no, I do not enlist, but if you want to be enlisted I will give you a ticket to New York, and from there the officer would give me a ticket to Halifax.

Q. Did you tell him you would enlist in Halifax?

A. No, sir, I did not tell him that, I told him I wanted to enlist, and he gave me a ticket, he did not give me any money, he took my name.

Q. Was it written in a book or on paper?

A. I suppose it was written on a sheet of paper; Mr. Hertz took my name, he wrote it.

Q. Did you go on board the boat? A. Yes, sir.

Q. (Ticket shown,) Was it one of these tickets that you had?

A. Yes, sir, I had one of that kind, I went down to Pine street wharf; Mr. Hertz was there the day the boat sailed; I went down with a friend of mine to the boat; I saw this man, Mr. Bosschart there, and he saidthis is the boat that goes to New York, Mr. Budd was on the boat, he was in command, he took my name on board the boat and called us together the same like an officer; there was 12 or 13 men together, and he had command of them, that is what I saw; he took the names on the list and as he took them he called us together, and told us to go on that side or this, he mustered us into rank.

Mr. Cuyler. What do you understand by mustering into rank?

A. Well, we stood in a line, and he said fall in.

Q. Who told you that? A. This young gentleman, (pointing to Budd.)

Q. That is not Mr. Hertz? A. No, sir.

Q. Who is it? A. Mr. Budd, that is the gentleman.

PATRICK CONROY, sworn. Examined by Mr. Van Dyke.

Q. You have been examined before in this case?

A. Yes, sir, before the Commissioner.

Q. State to the Court and Jury what you know in this matter, and what you have heard from either of these defendants, Hertz or Perkins?

A. I never saw Hertz but at the United States Commissioner's office I had the conversation about this matter with Mr. Perkins.

Q. State when you had that conversation, and what it was?

A. Well, I was introduced to Mr. Perkins at the *Pennsylvanian* office. Is it necessary for me to state all of this matter?

Mr. Van Dyke. If it relates to the issue now on trial, state all.

Witness. I was introduced to Mr. Perkins at the *Pennsylvanian* office sometime last December, I suppose in that neighborhood; and a few days afterwards I had a conversation with him at Mr. McGeoy's Hotel, in Walnut street, in which he said there were things he might wish to talk to me about; I did not understand it at the time, and not knowing what he meant I did not say anything; the next time I met him was at the *Pennsylvanian* office again; he was about leaving it in the evening, and he was cursing and ready to kill all about the office, damning every body in the office; I asked him what was the matter, and he took me by the arm and we walked down a little; he said that he had just been writing a letter to one of the Lords in England who had charge of the government there; that he had everything right with the *Pennsylvanian* newspaper here, so far as siding with the government against Russia was concerned, and when the first thing he saw that morning, was an article directly against what he had written to England, and that the *Pennsylvanian* had deceived him! I passed it off carelessly, as I did not care what was going on between him and the *Pennsylvanian* or the British government. I met him again sometime afterwards in the Exchange Hotel, and he called me to one side and told me that it was necessary to raise a certain amount of men in this country for the purpose of raising a legion to go to the Crimea. I asked him how it was and he said that such was the case. I asked him then whether there was any danger in enlisting men in this country for that purpose, for I had heard that there was, and he said no—that he had been down at Washington, and fixed all that. He said that Mr. Crampton sent for him, and when he went to Crampton, he sent him to Marcy, and when Marcy asked him all about it, he said he humbugged him about it, and told him that he was only going to send the men to Halifax to dig a canal, that Mr. Marcy in reply remarked, that he was a pretty cunning fellow, and then it all passed over; it was all fixed, and there was no more danger at all about in; he then said to me that if I would choose to take a part in the matter, that he could guarantee me a commission in the legion for a certain number of men, and for a less number he could guarantee a non-commission; that if I would take an interest in the matter he would fix things for me, but that it would take two or three months to do so; that I knew there were a great many men over the country who were suffering from bad times and who could be enlisted, and that he would make it to my interest to do so. I told him I would think about it. The next time I saw him he was going directly from his office in Third street; from the steps of his office he went down to Campbell's cellar in Third street. He was there a minute or more, and then he came up and came over to me opposite the Exchange Hotel; he took me by the arm and pulled me to one side and asked me if I had done anything in that matter yet, I said no, I did not intend to do anything in the matter myself, but there were friends that might, he then said to me that he could not guarantee a commission in the regular army, but he could in the foreign legion, and if I had friends who would take such positions he would guarantee them the same, and if I saw any who wanted to enlist to send them over to the office, 68 South Third street, I said I would do so, and he then remarked, I am now in a hurry, I am going down to the British Consul's; I have news from Washington, and I will see you when I come back. I had no more conversation with him on the subject, except that he told me he was an agent of the British government, and had 3 or 400 men to look after in this country, and pay them. He told me that on the occasion when he had to see me in a hurry; he repeatedly told me that he was an agent of the

British government, and solicited my assistance in all these ways for the purpose of raising men for the foreign legion.

Q. Did he tell you where the enlisting was done?

A. He did; he pointed over to the office, No. 68 South Third street.

Q. Where was he at the time?

A. Standing on the steps of Durar's Exchange Hotel.

Q. How long before the arrest of Hertz?

A. Some two or three weeks.

Q. Are you in the Volunteer corps?

A. Yes, sir; I hold the commission of Colonel.

Q. Did he ask you anything about the commission you had?

A. Yes, sir, he asked me what commission I held, and I told him Colonel of the Second Regiment of Pennsylvania Volunteers, and he said he could guarantee me a captaincy, if I would go, and he knew from my position here that I could be of use to them, and he would make it of use to me; I have now stated pretty near the whole substance of the conversations; we had a great many other conversations, but there was nothing stronger in them.

Q. Did he tell you at any time, or do you know, that he actually engaged any person to go to Halifax for the purpose of enlisting, and if so, what person?

A. I do not, sir; I know he tried to engage me.

Q. Did he not engage you?

A. No, sir; I refused him, and he tried to get me to solicit others to do so.

By Mr. Gillou. Q. He said that you could be useful to him in that line of business? A. Yes, sir.

Q. You are in business in this city? A. Yes, sir.

EDWARD W. POWER, sworn.—Examined by Mr. Van Dyke.

Q. Are you a military man?

A. I belong to a military company and hold a commission.

Q. Do you know anything about Hertz?

A. I do; I was at his office in South Third street about the 20th or 21st of March, or thereabouts; I went to 68 South Third street, and went up stairs into a back room, and there I found some five or six men sitting around the table; I spoke first to this gentleman here, I think, Mr. Leob; I asked him whether that was the place in which they enlist men for the Crimea; he said that this gentleman, pointing to Mr. Hertz, was the person. I then turned to him and asked him what were the inducements offered to those men who had served in Mexico during the war. He said that any man who could come with a company, and capable of commanding them, would be entitled to a commission in the English army; that this legion was for the purpose of going to the Crimea; he asked me if I was connected with anything here; I told him that I was, that I then held a commission, and he asked me then what number of men there were; well, I said, we numbered from 60 to 64, but there was not more than 30 equipped. He then seemed anxious that I should call again; I left him, with the promise that I would call again; I did so, in company with Peter Somers, who was formerly First Lieutenant of the Continental Guards; I went there and introduced Mr. Somers under a fictitious name; I did that for the purpose of ascertaining how they sent the men away, so as to have him ascertain that fact. We had a conversation,

for the second time, with Mr. Hertz, and Somers laughed, and I thought the joke was being carried too far, and I kind of smiled, and then I saw the whole thing was settled and we retired. On the 27th, the night before the arrest, a man by the name of Renners, I think, came to the armory while I was drilling the company.

Q. Was Mr. Hertz there? A. No, sir.

Q. Do you know whether Perkins had anything to do with that office?

A. Yes, sir; the second time that I went there, that was on the Saturday, Mr. Perkins was sitting in the front room.

Q. When you land at the top of the staircase going up, you go into the back room of that office first, do you not?

A. Yes, sir; and that makes the front room the back room; there were two folding doors between the two rooms, and they were partly open; the room fronting on Third street was used as the back or private office, and the back room as the front office.—There was a tall man there from whose appearance and manner, I supposed he was an English officer, or one engaged in the English service. Perkins was sitting on a chair leaning back, and as he saw me, he drew his head back.

Q. Do you know from any conversation you had with Perkins, or are you aware that Perkins has ever engaged any individual to go to Halifax to enlist?

A. Well, I would not, may it please the Court, like to answer that question, because it would, to certain extent, criminate me, so far as the law of the State is concerned.

Mr. Van Dyke—I did not ask you anything regarding yourself with Perkins. Q. Do you know whether he has engaged, hired, or retained, or made a bargain with any other individual?

A. I know that he left me one evening to go to New York, for the purpose of attending to some business for Mr. Crampton.

Q. You do not exactly comprehend my question. Do you know whether he ever said to any individual, "I want you to go," or did he engage any individual to go to Halifax? A. No, sir.

Q. Do you know what he was doing in the front office when you saw him there?

A. No, sir.

Q. What was your conversation at that time?

B. Mr. Hertz and I were speaking together about this company.

Q. Was that the only time you saw him there?

A. I saw him afterwards come out; I went there with a number of persons, who waited on the outside to hear what was to be said, as they were determined that the thing should be broken up, and as we stood on the other side, Mr. Perkins came out and went down into Campbell's cellar, and then he came out and over to the other side, and spoke to Conroy and some others with him; my introduction to Perkins was that he came with a note to me as the second of a gentleman, who had challenged a friend of mine to fight a duel.

Q. He told you he was going to New York, to see Crampton?

A. Yes, sir, he said he had business with him; he told me that in Brown's Drug Store.

Q. Did he tell you what business?

A. No, sir; he told me that he had a great deal of business to do now; that he was connected with the railroad, and had to see his friend Mr. Crampton in New York.

HUGH CASEY, sworn. Examincd by Mr. Van Dyke.

Q. Do you know Mr. Hertz? A. Yes, sir.

Q. (Pointing to Hertz) is that the gentleman? A. That is the gentleman.

Q. Do you know Mr. Budd? A. Yes, sir, (pointing to Budd,) that's him.

Q. Did you go the office, No. 68 South Third street?

A. Yes, sir, I went there, and Mr. Hertz and I had a conversation. I saw in the *Ledger* that they were enlisting for the foreign legion there, and I went down and saw Mr. Hertz, and he told me to come back and he wouid give me a ticket; I went there on Friday, and he gave me a ticket to sail on board the boat with, and twelve-and-a-half cents, and told me that the boat would sail on Sunday, the 25th; I went back on Saturday with thrce other men who enlisted with me, and he gave me a quarter of a dollar. On Saturday afternoon, I went back again and he gave me nine cents, and on Sunday, I went down to the boat and she had sailed. I went to the office on Monday, and Mr. Hertz was not there, but Mr. Budd was there, and he told me to come back on Wednesday, and he would give me a ticket. On Wednesday, I went down.

Q. What did you do with the tieket you got on the first occasion?

A. I gave that ticket up. I guess you have it now. On Wednesday, I went down there, and met Budd at the steamboat with Mr. Hertz. Mr. Hertz saw me and told me to go on board. I went on board the steamboat, and there I saw the rest of the men had tickets in their hands, and I had none; and then I went up to the office, thinking that Hertz was there, to get a ticket, and when I came back the boat had sailed.

Q. Did Hertz give you the first ticket?

A. No, sir, Mr. Budd gave me the ticket himself for Sunday; I do not recollect getting it on Saturday; the 31st of March I saw Mr. Hertz.

Q. When you got back from the office you say the boat had sailed?

A. Yes, sir; I went up to the office in Third street, and when I came back the boat had sailed; it was the "Menemon Sanford;" I then came back and I saw Mr. Hertz on Saturday, in Mr. Heazlitt's (I think that is his name,) office; he was looking for bail, and I went over to him, and Hertz said to me, "Who is going your bail;" and I said, "I do not want any bail, because I come out of the boat to get a passenger ticket, and did not go;" and he then said, "Do you want a little money?" and told me to stop around by-and-bye, and he would give me some money; I went around at 4 o'clock. Mr. Remak and him wcnt up to Seventh and Chestnut streets, and I waited in the room until he came back, when he gave me twenty-five cents, and said to me, "You will go and swear against me, and be damned to you."

Q. Did you tell him what you wanted to go to Halifax for?

A. I said timcs were very hard, and I would like to go to Halifax for the purpose of enlisting in the foreign legion for the Crimea, and then he said that he would give me tickets to go there, and that I would get $30 bounty, and $8 a month, but that he could give me no money until I went on to Halifax.

Cross-examined by Mr. Remak—Did you not tell some people that you were going to see Mr. Van Dyke, and get him to send you to prison for the purpose of your support?

A. I did not, sir, use that expression; I told a person that I met on the street that I was fooled by the party, and that Mr. Hertz insulted me, and I would go as State's evidence against him.

PHILIP LABEL, sworn. As this witness could not speak the English language, Mr. Davis was, at the request of Mr. Remak, affirmed as his interpreter.

Examined by Mr. Van Dyke.

Q. Do you know Mr. Hertz?

A. Yes, sir, (pointing to Hertz,) that is the gentleman sitting there.

Q. State all you know about the enlisting?

A. I read in the *Democrat* that some persons were required to go to Halifax, and I went to the office, No. 68 South Third street, and made some inquiries there, if that was the place for enlisting; I made the inquiries of Mr. Bosschart; I then inquired if they engaged some people there; they told me that they desired to engage some persons to go to Halifax, in order to work there; I then asked him if I could become a soldier if I went there; he made the reply that it was left optional to me to do so or not, that those who are willing to become soldiers may do so, and those who wished to work may do so too.

Q. Did you say whether you were willing to become a soldier, and that you wanted to become such?

A. No, sir, I did not intend to go there as a soldier; I made the inquiry, if when a person got there he enlisted, what he received; I was then told there was $30 bounty, and $8 a month.

Q. Who told you that? A. The same man, Mr. Bosschart.

Q. What conversation, if any, took place between you and Hertz?

A. The first day that I came there I saw this gentleman there, I then inquired what time the vessel would go; he told me that he did not know, that Mr. Hertz was not in and he could not tell me; I went there again on the following day and saw Mr. Hertz, and he handed me a card.

Q. (Ticket shown, same as on page 15 ante.) Was it a card like that? A. Yes, sir.

Q. Did you sign any paper?

A. No, sir, I did not; that gentleman put my name down on some paper; Mr. Bosschart did so.

Q. Did you go to the vessel?

A. Yes, sir? Mr. Hertz told me where the vessel was, and I went towards it—that is all; I went on board, and that is all.

Q. Did you go to Halifax? A. No, sir.

Q. Why not? A. Because we were arrested before then.

Q. Who had command of you on the boat? A. Mr. Budd.

JAMES JOHNSON, sworn. Examined by Mr. Van Dyke?

Witness—Matthew Burk is my proper name, you will see it so on Mr. Hertz's list.

Q. How came you to get the name of James Johnson?

A. I did not wish my name to be published in the papers so that my friends would know it; I gave my proper name to the Court at the time.

Q. Why did you not want your real name known?

A. I did not want my friends to know that I was made a prisoner.

Q. Did you not give that name under oath?

A. No, sir, I did not; I told the Commissioner, and the Grand Jury, and you, my proper name, and the circumstances of it.

Q. Do you know Mr. Hertz? A. Yes, sir.

Q. When did you see him? A. I saw him on the 27th of March.

Q. Did you see him before that? A. No, sir.

Q. Was you on the boat?

A. Yes, sir—in the steamer Menemon Sanford, on the river Delaware.

Q. Had you seen Mr. Hertz before that?

A. I saw him the day before, at 68 South Third street. We were taken on a Wednesday.

Q. How came you to go to his office?

A. I called first on Monday. I saw the advertisement in the *Ledger* of men wanting. I did not read it myself, but another man read it for me, and I went to see. Mr. Budd was there. I told him I had called from seeing the advertisement of soldiers wantedt and I said that I wanted to enlist. Mr. Budd told me that I could not be enlisted there, but that he could tell me how I could get to Halifax, and said that I supposed that would do to get to Halifax; he then told me I must come once again. I called again that afternoon, which was Monday afternoon, and he told me that a boat had gone before, and it was a pity I had not been sooner. I called again on Tuesday, and Mr. Hertz was there. I told Hertz my business, that I had come to enlist, and the reply he made I cannot tell now, but it was "very well," or something to that effect. He told me to stay awhile, and I staid a while and some more men came. I told him my name and he wrote it down on a sheet of paper; he also wrote some others. I told him when he was going to write it that another man had written it the day before, and he said very well, I will take it again.

Q. (Paper shown.) Is that the paper on which your name was written?

A. That is my name on it, though I cannot say whether it is the paper on which Mr. Budd wrote my name the first day; I called on Hertz the day after; he did not tell me what bounty I would receive; I did not inquire; he gave a ticket and I was to go down to the boat.

Q. (The "N. S. R. C." ticket shown.) Was it a ticket like that?

A. I actually believe it was one of them green tickets; I think so, but would not swear positively that is was a green ticket, though I actually do believe it was one; I recollect it having those letters ["N. S. R. C."] on it.

Q. What did he tell you to do with the ticket.

A. He told me I was to go down and go on board at Pine street Wharf; I then went away, and called back again to the office, and I asked him "was I to go on board and say nothing to no one, or was there to be anybody there to receive me;" he told me to go down between nine and ten, and go straight on board, and to tell the rest, if I saw them, to go on at the same time. I went next morning and did so, and went on board the boat and was taken about to the Navy Yard when they brought us back again.

Q. What took place when you got on board the boat?

A. I saw Mr. Budd on board the boat, and we were called together, and an exchange of tickets took place; we were going on, and I thought in a fair way for Canada, and the next news that I heard was that we were all made prisoners.

Q. Did Mr. Budd call you together?

A. Yes, sir, he was there acting as a kind of officer or man in authority; he did not put us in military form, but called us together.

Cross-examination by Mr. Remak.

Q. How much money have you received from the United States as witness fees?

Mr. Van Dyke objected. You need not answer that question.

Mr. Remak—I only wanted the jury to know; you need not mind.

PETER MUHN, sworn. Examined by Mr. Van Dyke.

Q. Do you know Mr. Hertz?

A. Yes, sir, I have known him since the 26th of March. I first saw him in the office, No. 68 South Third street.

Q. How came you to go there?

A. There was a man told me that there was an office to send men to Halifax to work. I was out of work and went there. That was on Monday afternoon, and I found nobody there but Mr. Budd, and that young man there, Mr. Bosschart. He told me to come next day when Mr. Hertz would be home, and then I could know all about it. I went there the next day, and he said yes, he sent men to Halifax to work.

Q. What kind of work?

A. Any work that you pleased, and if I did not like it there, I could get a free ticket back here again, and that if I wanted to go in the army, I would get $30 bounty, and $8 a month. He told me to come in again about 2 o'clock, and he would tell me all about it. I went in about 2 o'clock, and he said that Budd was going off next day at 10 o'clock, and he gave me a ticket.

Q. What colored ticket was it; red, yellow, blue or green?

A. I do not recollect, one of the green, I guess; (ticket shown,) that is like it; Pine street wharf was on the back of it.

Q. You went to Pine street wharf? A. Yes, sir, and I went on the boat.

Q. Who did you meet there?

A. I met Mr. Budd; he was there, and he took command of us.

Q. Did you ever see Hertz down there? A. No, sir.

Q. You were arrested that day, were you not? A. Yes, sir.

JOHN JENKINS, sworn. Examined by Mr. Van Dyke.

Q. You are Deputy Marshal? A. Yes, sir.

Q. Will you state whether you had a warrant in the latter end of March, for the arrest of certain parties, and whom?

A. The Marshal had a warrant for the arrest of Hertz and others, and I accompanied him.

Q. State what you did then?

A. The Marshal directed me to go on board the Steamer Sanford, and arrest the party that were there. I arrested Mr. Budd, together with some 12 or 15 men, whose names I do not remember. The Marshal himself, afterwards went to the office of Mr. Hertz, and there arrested Mr. Hertz, Mr. Bosschart, and two others—four in all, I think.

Q. Mr. Hertz was among them? A. Yes, sir.

Q. You arrssted these men? A. Yes, sir.

Q. ("N. S. R. C." tickets shown.) Do you know these tickets?

A. Each of the men had tickets similar to those upon their person. I took them from them.

Q. (N. Y. Steamer ticket shown.) Do you recollect that?

A. I do not recollect that.

Q. (Book of Dr. containing cash account shown.) Do you remember that book?

A. No, sir, I do not.

Q. (Book containing list of names shown.) Do you remember that book?

A. Yes, sir, I remember that book. I found it in the secretary which Mr. Hertz called his private seeretary, in the enlisting office. He gave me the key, and I opened it.

Q. (Receipt shown.) Did you find that there? A. Yes, sir,

The receipt was read in evidence, as follows:

PHILADA., *March* 25, 1855.

Received of Mr. Hertz, $84 for passengers to Halifax.

A. WINSOR.

Q. Did you find this receipt of the *Ledger* for advertising 1 and two-thirds squares ½ month $9,50, dated March 16, 1855, at the office, No. 63 South Third street?

A. Yes, sir, it was in the secretary; I recollect it.

Q. Did you find the receipt of the *Pennsylvanian* there?

A. Yes, sir. This receipt will be found on page 41 ante.

Mr. Remak—Q. Is Mr. Hertz's name in that receipt?

Mr. Van Dyke—A. No, sir, it is not.

Q. (N. S. R. C. ticket shown.) Did you find any number of these tickets there?

A. Yes, sir, they were similar to these.

Q. What did you do with them? A. I gave them to you.

Q. Do you recollect whether you arrested Michael Gilroy as part of that company?

A. Yes, sir.

Q. On the boat? A. Yes, sir.

Q. Hugh Casey? A. Yes, sir.

Q. James Johnson? A. I do not remember the name.

Q. Charles Weaver? A. I do not remember the name.

Q. Peter Muhn? A. I do not remember that.

Q. Philip Label? A. No, sir.

Q. Augustus Titus? A I remember that.

Q. Bremen Kernsten? A. I do not remember that.

Q. William Finley? A. No, sir.

Q. You remember Titus, you say?

A. Yes, sir, I believe they all were the parties on the boat, but I do not remember the names at this time, nor did I hear the names at that time; I remember Gilroy, Titus and Cascy.

Q. (Paper shown.) Do you remember that paper?

A. Yes, sir, I got that in his office, it was on the file.

The paper was read in evidence, as follows:

"PHILADELPHIA, 26th of 3d month, '56.

This is to certify, that Mr. Julinas Lyncks is in sound health and fit for any service.

BEIL, Docter."

Q. (Papers shown witness.) Do you remember those?

A. Yes, sir, these were in the secretary.

Mr. Van Dyke. The one is the paper which Mr. Budd stated contained the names of the persons he took, and the other appears to be a copy of the recruiting book.

Examined by Mr. Remak. Did Mr. Hertz, on the day of his arrest, give you the key of his office and the key of his desk of his own aceord, freely?

A. I demanded them.

Q. Did he give them without any hesitation?

A. I demanded them through you, and after consultation with him, you directed Hertz to give them to me.

Q. Did he give them of his own accord or did I ask him?

A. I think that it was after you directed him to do it. I do not think I had any conversation with Mr. Hertz about the keys—it was with you.

Q. I think in your examination before the Commissioner, you said that at the time Hertz gave you the keys, and I had no objections.

Q. By Mr. Guillou—You mentioned that you arrested a number of persons on the boat, and you also said that you arrested at the office, Hertz, and some others, which you did not mention. You did not arrest Mr. Perkins there?

A. No, sir, the Marshal arrested Perkins. He was not at Mr. Hertz's office, or upon the boat. I do not know where he was when he was arrested.

EDWARD G. WEBB, affirmed. Examined by Mr. Van Dyke.

Q. Are you acquainted with Mr. Perkins? A. I am.

Q. Have you ever had any conversation with him previous to the 28th of March, in relation to recruiting for the British service?

A. Yes, sir, I cannot speak as to the date, but during the time the enlistment was going on in Third street, opposite Dock, I met Mr. Perkins in Dock street; I think at the corner of Third and Dock, and we walked down as far as Walnut and Dock streets, and there stopped; a conversation arose between us as to the enlistment going on, or said to be going on, in one of those buildings on Third street; he stated he was hiring men at $1,25 a day, and sending them to Canada or Nova Scotia, or some other place in the British Provinces; I asked him for what purpose, whether they were to go in the foreign legion to serve in the Crimea; he said he employed them nominally for that purpose—I do not know whether I use his language, but I give the idea—of working upon a railroad; I remarked to him that I thought they would find their way into the barracks, and he said he had no doubt of that, or he supposed so, or something of that sort.

Q. Did he state to you at any time whether he was doing this at the suggestion or by the advice of any higher authorities than himself?

A. He did; he told me he had not been long from Washington, and that he had had an interview with Crampton, the British Minister, while there, in relation to this subject, and that he had been called to Washington in consequence of some disclosures made in Philadelphia, or other places, about the matter; I understood him to say that he or Crampton waited upon Mr. Marcy, or that Crampton told him that he had seen Mr. Marcy and had entered into an explanation about the course they had pursued in Philadelphia, and that after he had explained, Mr. Marcy either clapped him upon the shoulder—Perkins or Crampton, I do not now distinctly recollect which—and said "you are a *cunning dog*, you have not violated any law of this country."

Q. Did he tell you what he was doing?

A. He said he had employed a large number of men; he mentioned the number, but it has escaped my memory; that he employed them at $1,25 a day, to go into the British Provinces, nominally to work upon the railroad, but really, to go into the army.

Mr. Guillou—Did he say that?

A. That is not his precise language, but that is the idea; it is impossible for me to recollect his language.

Q. Give the substance of it?

A. As near as I recollect, he said that he had employed a large number of men, and had dispatched, I think he said 500, already, nominally to work upon the railroad in one of the Provinces, but he expected that they would find their way to the barracks; I asked him whether he did not employ them for that purpose; Well, he said, he did not care a damn where they went after they got there; that his purpose was to get them there, and then they might take care of themselves.

Did he say that the British authorities would take care of them after they got there?

A. I cannot say with accuracy, whether he did or not. He talked very fast; he was in talking mood, and said a good deal; I saw from his flushed face that he was in a talkative way.

Q. Did he at any time try to get you to write editorials in your paper on this British question.

A. He did. He was in the habit of coming into the *Pennsylvanian* Office, nightly, and daily, long before I knew who he was. After he had been coming there several weeks, he ventured into the Editorial department, and conversed with the Telegraphic reporter, Mr. Johnson; he entered into conversation nightly with me upon the subject of the war in the Crimea, and contended that the Democratic party ought to take ground in favor of the Allies; that in fact, the United States, as a general thing, should do so, because she was the daughter of Great Britain; our people spoke the same language, and were educated in the same literature, and so on; he frequently grew warm upon the subject, and I listened to him; and repeatedly, while he was talking upon that subject, I was writing an article against the Allies, and combatting his argument as he was progressing.

Q. Which is Mr. Perkins?

A. I know him very well, I have seen him almost every day; but I do not see him now in the room.

Mr. Guillou. There is no difficulty about that?

Witness. He always said that he was an Agent of the British government, and that he was in correspondence with Lord Palmerston, and I think, Lord Clarendon. He gave me to understand that he was a tory, and that the tory party in England was the only party that knew anything; (laughter,) that they were always able to carry on the Government properly, and that the Whig party was composed of dunces, (laughter) who always got into difficulties, and were the bitter enemies of this country. He said that he was a correspondent to several newspapers, and mentioned particularly the "*Times*," and stated that he had, with every mail, sent a file of the *Pennsylvanian* to Europe, to the *Times*. He also spoke of Lord Brougham, and said that he was in correspondence with him.

Q. Did he say the correspondence was on this subject?

A. No, sir, I do not think he did.

Q. Did he mention the subject?

A. He was talking about this subject at the time he said this. He complained about the tone of the articles in the *Pennsylvanian*, and showed a good deal of feeling. He said that he had written to his employers in Europe, and had assured them that the Democratic press in this country was all right, which I believe did not happen to be the case—(laughter)—and that they would think it very strange that he should give them such information, when they found the tenor of the articles against the Allies so ultra, and so strongly in favor of Russia.

Judge Kane. Did he classify Brougham among the Whigs or the Tories?

Witness. I do not remember whether he classified him or not; he said he corresponded with him.

Mr. Guillou. May it please your Honor, he was like the man in the play, "he received letters from Constantinople," (laughter.)

Q. Did he speak of this as confidential?

Witness. Yes, sir, he did, and remarked on several occasions, that what he told me was contained in some letters, which he had just received, but could not show the letters to me, (laughter.)

Judge Kane. Was there any relations between you and him, which would have suggested the propriety of his telling you this?

A. No, sir, he is excessively talkative, but is a man of large information, obtained by travel—and is a man of education; he spoke of his being Lieutenant in the British Army in India, and was promoted to a Captaincy by the brevet; that he had been there, and was in Hindoostan, and in that terrible fight in the mountains of Affghanistan, where the British army was literally destroyed. He also spoke of his wounds, but never showed them. (Laughter.) He also spoke of his having been directed to superintend the embarkation of troops to some part of Africa or Hindoostan.

Q. By Mr. Van Dyke. You are the editor of the *Pennsylvanian?* A. I am.

Q. And that is what induced this conversation with you? A. Yes, sir.

Q. You were at the time editor! A. Yes, sir.

Judge Kane. And your press was at the time, unfriendly to his projects!

A. It has been, during the year and a-half that I have been editor, and was so, I think, before. I did not like the threatening remarks towards the United States, of some of the gentlemen high in power in England and France, and I thought we had better take care of ourselves, and put our house in order; and, therefore, I wanted the Allies soundly drubbed.

Q. By Mr. Van Dyke—I believe you have stated in substance, everything?

A. As far as I recollect.

Q. Did he at any time say he engaged, or retained any person to go to Halifax, with the intention of being enlisted after he got there?

A. Well, he spoke in general terms, and left the impression upon my mind, that he had employed those men for that purpose, and had some understanding with them, that after they got there, they were to go into the barracks. He may have mentioned them by name, but I have no recollection of it; he left the impression upon my mind, that they were employed for that purpose.

Q. Have you stated fully the conversation which he repeated to you as having had with Crampton upon that subject!

A. I cannot recollect it; he talked a good deal upon that subject, and endeavored to impress me with the idea that he was a very great man, and knew the secrets of the British Cabinet.

Q. You were never at this recruiting office, No. 68 S. Third street?

A. I passed by it daily, and saw something was going on; but did not know what. I saw several persons going in and out, and saw him repeatedly come out, which led me to suspect that he was a party in the matter.

Cross-examined by Mr. Guillou.

Q. I do not think you understand a question of the Judge. He asked you whether the opinion expressed in the *Pennsylvanian* was adverse to the project of the defendant, and, as I understand you, you answered that it was adverse to the war in Europe?

A. It has been against this project of enlisting, and it has been very severe. It was the first that denounced it and exposed it.

Q. State whether Perkins is not a man who talks a great deal?

A. Yes, sir, he talks incessantly. He is a man of large information, obtained by travel, and is a man of education, but not much judgment.

Q. His temper rises pretty high sometimes? A. Very

Q. Mr. Conroy mentions an instance when he left your office, cursing all in the office?

A. He was frequently excited about the subject, and I would then draw him out to the length of his tether.

Q. And you were writing articles, firing away at the Allies, and loading your guns with the ammunition he furnished you?

Mr. Van Dyke. May it please the Court; having, as I think, proved a clear prima facia case against one of the defendants (Hertz,) and submitted all the testimony I have to offer against the other (Perkins,) I deem it unnecessary to extend the examination of the witnesses relative to Mr. Hertz—I therefore close for the present, the case of the Government.

[The Court then took a recess for half an hour.]

The District Attorney having closed his case, the counsel for the defence said they had no testimony to offer.

Mr. Guillou for Mr. Perkins, asked the Court to instruct the jury to return a verdict of not guilty as to Emanuel C. Perkins, there being no evidence to hold him.

Mr. Van Dyke—Is it the intention to make a witness of the defendant?

Mr. Guillou—No!

Mr. Van Dyke—This application is entirely within the discretion of the Court, and I presume, might be granted, if the ends of substantial justice were to be served by so doing; but as Mr. Perkins is not to be put upon the stand, nothing is gained to either of the defendants by separate verdicts. I am frec to admit, that under the former ruling of the Court, I havc not made out such a clear case against the defendant Perkins, as I should have liked, but I prefer the going jointly to the Jury as they now stand. The result, no doubt, will be the same to Mr. Guillou's clicnt.

Mr. Guillou—Under the remarks of the District Attorney, I withdraw my application.

Mr. VAN DYKE, in summing up for the United States, said:—He did not deem it necessary, further to examine the witnesses, which could be produced. That he was satisfied the testimony which had already been submitted was conclusive in favor of the government, on all the questions which had been submitted to the jury. He had but very few suggestions to make at the present time, and such he should address to the jury, more through the medium oft he Court, than directly to themselves, because it was his belief that under the charge which the Court would give of the law bearing upon the case, the jury would have no difficulty in finding the defendant Hertz guilty, in the manner and form as charged in each and every of the bills of indictment laid before them.

The Act of Congress, may it please the Court, provides, (I recite it from memory and the Court will correct me if I am wrong,) First. That if any person shall, within the territory or jurisdiction of the United States ENTER HIMSELF in the service of any foreign prince, &c. This is one distinct and separate misdemeanor created by the act.

Second. If any person shall HIRE OR RETAIN ANY OTHER PERSON to enlist or enter himself in the service of any foreign prince, &c. This is another and the second distinct misdemeanor created by this Act.

Third. If any person shall HIRE OR RETAIN ANY OTHER PERSON TO GO BEYOND THE LIMITS OR JURISDICTION OF THE UNITED STATES, WITH THE INTENT TO ENLIST OR ENTER HIMSELF in the service of any foreign prince, state, colony, district or people, AS A SOLDIER,—not as a soldier on board any vessel or letter of marque, as has been contended, but as a soldier according to the general common acceptance of the term,—or as a mariner on board any vessel or letter of marque, &c.

Now, these, three, are distinct and separate offences. The first is that of a person enlisting or entering into the service of any foreign prince, state, colony, district, &c. In relation to this, he said, the defendant is not in any manner charged in the indictment, and, therefore, it is unnecessary to embarrass the Court and jury in taking into consideration any facts which relate to an intent on the part of the defendant to enter and enlist himself. Neither has the defendant, nor any other person, been charged with having *absolutely enlisted within the territory or jurisdiction* of the United States; nor is the defendant, or any one else, charged with having gone beyond the limits or jurisdiction of the United States with the intent to enlist.

What, then, is the charge? What, the only issue upon which I ask this Court to charge the Jury, that the Government have made a clear case? It is *first*, that the defendant HIRED and RETAINED some persons to enlist within the limits or jurisdiction of the United States. This crime is charged in two ways, in the first two counts in the indictment; and *secondly*, that the defendant has within the jurisdiction of the United States, HIRED and RETAI ED certain persons TO GO BEYOND THE LIMITS AND JURISDICTION of the United States, with the intent to enlist when they arrived beyond such limits and jurisdiction. This crime is charged in various forms in the four remaining counts of the indictment.

It is no offence under the statute, in Muhn or Budd, or any one else TO BE hired. So that those recruits who have oluntarily came upon the stand, and confessed their participation in this lawless transaction, have confessed no crime. If A. hires B. to go beyond the limits of the United States, with the iutent mentioned in the act; B. having agreed with A. wit n the limits of the United States, to depart with the intent to enlist; the crime or offence is not committed by B. because he merely engaged with A. to go, but the offence is committed alone by A. who hired him, for so far as the going beyond the limits of the United States, with the intent to enlist, is mentioned in the act; the offence consists in HIRING or ENGAGING the person to go, and not in *being* hired or engaged to go. And the court is asked so to charged the jury. Then, as to the intent, what is meant thereby? and who must have such intent? On this point the court is asked to charged the jury, that the intent mentioned in the act is the motive in the mind of the person hired, and has no reference to the design of the person hiring, except that the person hiring believed, or had reason to suppose, the person hired really intended to enlist, when he should arrive beyond the limits of the United States, and that he hired him for such purpose. That if the jury, from all the testimony, are satisfied, that Hertz, at the time he engaged Muhn, Budd, Weaver, or any other person mentioned in any of these bills of indictment, to go beyond the limits of the United States, and furnished m the facilities to depart, had the intention to enlist in the British Military service, then that point of the act, which speaks of the intent is sufficiently established.

Believing that the learned Court will give the jury in charge the law as he has stated it, Mr. V. called the attention of the jury to the principle features of the evidence in the case. He contended that he had established every point made in his opening remarks.

First. He had shown by incontrovertible testimony, that the necessities of the British government, resulting from the disastrous condition of their army in the Crimea, and the unpopularity of the cause of the Allies at home, compelled them to hazard the enlistment of soldiers within the limits of foreign neutral nations.

Second. That in the accomplishment of this design, the English authorities at home, and their representatives on this continent, had, in gross violation of the laws of the United States, concocted and partially matured a plan for procuring, within our territorial limits, sufficient men to supply the forlorn hopes of an unpopular war, and regain the lost prestige of a waning administration.

In support of these points, Mr. V. adverted to, and commented upon, the testimony of Capt. Max F. O. Strobel, Col. Burgthall, Col. Rumberg, Dr. Reuss, Mr. Bucknell, Mr. Budd. The truth of their representations had not been questioned, and the jury are bound, under their oaths, to regard their evidence as conclusive.

Third. That Henry Hertz, the defendant, was an agent of the English government in the accomplishment of this general plan and design. That he had been employed for that purpose by Mr. Crampton, Her Britanic Majesty's Envoy Extraordinary—the highest British functionary known in this country, as also by Sir Joseph Howe, the general agent, specially sent to America for this purpose, and by Sir Gaspard le Marchant, the Governor of a neighboring British province.

Fourth. That in pursuance of such employment, this plan was regularly carried out by the defendant. That he did, in the city of Philadelphia, engage at least two hundred men to go beyond the limits of the United States, with the intent to become a part and parcel of the British Foreign Legion. That in order the more effectually to accomplish this design, he opened, under the auspices of his English employers, a recruiting office, and advertised in the public papers, and posted through the streets placards bearing the Queen's arms, inviting men to his office. That the persons calling, in answer to such proclamations, were sent by the defendant to Halifax, who, when there, were attested, and mustered into the military service of the British government.

Fifth. That Mr. Hertz, at the time he was thus engaged in hiring and sending men beyond the limits of the United States, well knew that it was the intention of the persons thus hired and sent, to enlist in the service of her Majesty, the Queen of Great Britain.

Mr. V. argued that the affirmative of each of these propositions was fully sustained by the testimony produced by the government, and called the attention of the jury to that portion of the evidence which severally related to them. He said the character of the witnesses was unimpeached and that their testimony had been abundantly corroborated by the written evidence which he had been enabled to produce—That there could be no difficulty in finding a verdict of guilty as to the defendant Hertz. That if the jury believed both defendants guilty, they should so find. If, on the contrary, they did not think a case had been made out against Perkins, they should acquit him and find a verdict of guilty against Hertz—They could separate their verdict.

As to Mr. Perkins, Mr. V. said that he did not intend to press for a conviction where the evidence does not in the clearest manner justify him in so doing—That however much he might himself be convinced of a defendant's guilt, it was his duty to *prove* him so, and that beyond reasonable doubt. From the intimation of the learned Court when this case was before it on writ of Habeas Corpus, he presumed his honor would require the government under the present form of indictment for a statutory offence, to prove an actual hiring or retaining of some one of the individuals mentioned in the bills. Should such be held to be the law under this statute, he was compelled in candor to say to the jury that he had himself, under the testimony, a doubt as to Perkins having been proved guilty. He regretted such was the case, but having brought all the evidence he could to bear against him, he left him in the hands of the jury without any expression of his private opinion as to that defendant's guilt.

Mr. V. closed his remarks by a severe commentary upon the baseness and perfidy of the persons engaged as the chief actors in this flagrant attempt to violate and evade the laws and treaty obligations of the United States, and expressed the hope that the result of this case would vindicate the action of the government in their determination to maintain our national integrity with every nation of the globe, whether it is or is not in accordance with sinister purposes of Great Britain. By forcing this indictment thus against this defendant, the President of the United States has struck as near the throne of Her Majesty as he is enabled to do in the shape of a criminal prosecution. The extended privileges and peculiar protection given to a foreign minister prevents, so far as he is concerned, the application of the criminal code of the country, although such foreign minister may be proved guilty of acts, which if committed by a private individual would make him a felon.

Were it not so, I think I am justified in saying, I would this day, by the direction of the President, be trying Mr. Crampton, Sir Joseph Howe and Sir Gaspard le Marchant, instead of their humble instrument, whose conviction is now asked at your hands. The jury, however, will leave these gentlemen to the only power legally authorized to take care of our public safety, by demanding reparation from their government, and you, gentlemen, may rest assured that in due time, they will be called upon by our able and faithful officers at Washington to make proper atonement for the gross insult which they have offered to our laws and our people.

If, on the contrary, after I have in this trial, instituted by the direction and with the cordial approbation of the National Administration, proved the defendant so clearly guilty, as the instrument and agent of Mr. Crampton and his confederates, you should, on account of any sympathy, which may be thrown into the jury box, acquit him; your verdict will be the strongest argument, which will hereafter be used to protect Her Majesty's agents in their impudent intermeddling with the affairs of this continent. Confident, however, that you are men devoted to the institutions and political policy of your own country—and as such, are ever ready, fearlessly to defend them, I leave, in your hands, the honor of the Government, and the rights of all those who seek shelter beneath its broad protecting ægis. Weaken not that power of protection by your verdict—stain not that honor by one moment's hesitation, in your approval of the determination on the part of the Government, to preserve every feature of our constitutional vigor, as well from the jealous designs of foreign powers, as from the fanatical treason of domestic foes.

Mr. VAN DYKE having concluded, he was followed by Mr. STEPHEN S. REMAK, who made a powerful appeal to the jury in behalf of the defendant, HERTZ. He spoke for two hours and a-half, giving a full history of the case, reviewing the testimony which had been submitted, and dwelling with great power and eloquence upon the law bearing on the subject. It would have afforded us great pleasure to be able to present his speech in full as taken by our reporter, but want of space forbids.

MR. CUYLER—May it please the Court, gentlemen of the jury: You are weary, gentlemen, and long to be released. I shall detain you but a few minutes by the remarks it is my duty to make to you in this case.

The facts of the case have been elaborately analysed and discussed by my colleague, and I deem it unnecessary to pursue the path in which he has preceded me—in reviewing and digesting the testimony you have listened to so patiently in this case.—The duty which has fallen to my share, may it please your Honor, is chiefly that of inviting your attention to the view entertained by the defence of the true construction of the Act of Congress, under which this indictment is framed—trusting, if you shall agree with us in that construction, that the Jury will not find in the evidence in this case, that a violation of the wholesome provisions of this Act of Congress has taken place.

You cannot have failed to notice, gentlemen of the Jury, in the progress of this case, that the names of those high in authority and official rank have appeared, and often appeared, to be mingled in the transactions from which these indictments have sprung. Mr. Barclay, the Consul at New York, Mr. Matthew, the Consul at Philadelphia, Mr. Crampton, the British Minister at Washington, have all of them appeared as prominent and earnest actors in the scenes which have been detailed in the evidence before you. Among the humblest of all who have been named, is this poor and unfortunate man—a stranger in a strange land, forlorn, friendless, and deserted, for whose conviction the zeal and learning of the District Attorney, and the power of the government, have been so earnestly and sternly pressed upon you. And here, pausing for an instant, let me pay my tribute of respect to the learned District Attorney, for the candor and liberality with which he has conducted the case, and for the more than usual fullness, perfection, and ability with which he has prepared and managed this prosecution. The power of the Government, so ably exerted and directed by him in this prosecution, is in strange contrast with the preparation this poor and friendless man has been able to make for his defence.

I cannot suppose, gentlemen of the Jury—I will not suppose—you will not, I trust, suppose for an instant, that these high functionaries of a foreign but friendly State, dwelling within our borders, have consciously either evaded or violated the provisions of any of the laws of the land. You will not believe that these gentlemen of standing, character, and intelligence, have deliberately planned an infraction of the laws of the country, and then left this humble instrument of their designs unfriended to bear the severe penalty of a law broken under their advice and in the execution of their requests.

You will the rather, gentlemen, believe with me, that, conscious of their own integrity, and with the law in full view before them, and with experience and capacity to construe the law aright, they so ordered their own course and so directed their subordinate agencies, that no violation of the law should anywhere take place. This, gentlemen, I trust you are now about to find. In a word, I shall submit to you that

no offence is proven within the construction of the Act which I shall ask the learned Judge to give you.

May it please your Honor, the offence with which this man is charged is unknown to the common law. The right of any man to expatriate himself, cannot under our law be questioned, except so far as the statute may have forbidden it to be done under certain particular circumstances, or with a certain intent which the statute forbids and punishes. Such a statute is the subject of strict construction. If the facts are not within its fair spirit and construction the offence is not made out, and it is your duty to acquit. Now what is the offence created by the statute, in derogation of that which otherwise would not be unlawful or in any way punishable. The second section of the Act of Congress of April 20, 1818, under which the indictment is pressed, provides That if any person shall within the territory or jurisdiction of the United States enlist or enter himself or *hire or retain* another person to enlist or enter himself or to go beyond the limits or jurisdiction of the United States with intent to be enlisted or entered in the service of any foreign prince, state, colony, district or people, as a soldier, &c. "Every person so offending shall be deemed guilty of a high misdemeanor, &c."

The offence does not consist of course in a person hiring or enlisting, and there is nothing of that kind in the case, but it consists either in hiring or retaining other persons to enlist, or hiring or retaining other persons to go beyond the limits of the United States with intent to enlist. The offence then is "the hiring or retaining." Now that means something more than mere persuasion. It does not mean that the mere exercise of an influence which operates upon the reason of a person and induces him to go, creates the offence. It must be a "hiring or retaining," or in other words it must be the creation of a legal obligation, or of that which irrespective of the provisions of this Act of Congress, would amount to a contract or legal obligation, and be capable of enforcement as other legal contracts are.

I submit then, to your Honor, this, as the true construction of this Act, and I ask you so to instruct the jury.

Now, gentlemen, upon the whole testimony in the case; has the evidence raised in your minds a conviction, free from all doubt, that there existed between Mr. Hertz and any of the several parties named in these indictments a valid, legal, binding contract "of hiring or retaining" them to enlist or to go beyond the limits of the United States with intent to enlist? If it has not it is your duty to acquit. Can you upon your oaths, on this testimony, say to me there has been such a conviction established in your minds.

Turn with me for a moment to the testimony. I shall not weary you with its details. But tell me, witness after witness was examined before you, and did they not almost with an unanimous voice tell you that they were not enlisted in the service of any foreign prince or state, nor placed under any obligation to enlist, but simply were to be transported to Halifax, and they were in the exercise of a perfectly free and independent judgment, either to enlist in the service of the Queen, or to decline to do so as they might in their mere discretion see fit to do? It is true there have been several witnesses upon the stand whose testimony might receive a different construction, but remember, gentlemen, the disadvantages under which these witnesses labored. They were foreigners—Germans—who spoke our language imperfectly, incapable of expressing as you or I would do those nicer shades of meaning which are needful to convey a true and precise impression of the facts. You will not say to me that such

testimony, and so little of it, will bear down in your minds the full strong current of other testimony, some of it written and precisely embodying the exact plan and intention, much of it oral, but clear and exact and perfectly consistent with that which was written, and all showing beyond question that no man was "hired or retained" in this country for any purpose whatever, but that they were simply persuaded to go to Halifax, and when there were in the perfectly free exercise of their judgments in their mere discretion to determine either to enlist or to refuse to enlist as they might then choose.

I can feel no doubt, gentlemen of the jury, that you will find this to be the weight of the testimony. If you do I ask you to acquit. If you do, you will find that there did not exist between Hertz and these parties a contract such as irrespective of this Act of Congress, would be valid, legal and capable of being enforced, and so finding, as there was no "hiring or retaining" within the meaning of the Act, you will acquit.

Gentlemen of the jury, I represent a very humble man, a poor desolate stranger.—If the law has been violated, which in view of the construction I have just given you it plainly has not; there are others upon whom with more justice its penalties should be visited. Let us shield this man, whose highest offence—if offence he has committed—is ignorance of the law, and let those wiser men of higher rank bear the penalty. This question should be settled elsewhere, not here. If our laws have been outraged, the government of Great Britain has done it. Let that matter be settled at Washington, and not in an account between the government and this obscure and humble man. But, gentlemen, I will not detain you any longer. You will not, I am sure, find in the facts of the case that the law has been broken anywhere or by any man. You will not find that mere persuasion is the creation of a legal contract, or that a man who is left free to the unpledged exercise of his own mere discretion have been "hired or retained" within the meaning of this Act. And so thinking and so finding, you will rejoice to restore this unfortunate man to his friends and his home, and to the wife and the children which wait for and long to welcome him there.

Mr. GUILLOU said:—May it please the Court, gentlemen of the Jury; if you will bear with me at this late hour of the day for five minutes, I will close my duties within that time. It is the boast of us all that we live in a land of laws, it is our safety that the law is administered by two tribunals—the one explaining the law, and the other applying it to the facts in evidence. The indictments upon which you are to pass, some 12 or 13 in all, charge the defendant Perkins, together with Hertz, with having enlisted specified individuals, A. B. C. The crime with which he stands indicted, is the enlistment of persons to serve in a foreign country. I have turned my attention carefully to the testimony in this case, because when counsel makes an assertion to a jury on a point of fact, it is his duty to ascertain that he is right in his statement, and I say after examining this testimony, that there is not any portion of it which shows any connection of Perkins with Gilroy, Budd, Casey, or any other person whose name is in any one of these bills as a party sent away, or enlisted. If I am right in this statement of the testimony, there is an end of this indictment, for the law requires that the party charged be shown by the evidence, to have acted in relation to the particular crime which is averred in the particular bill and in relation to the particular party, the subject of the crime. You will, therefore, when you take up a bill remember this, and ask yourselves whether Perkins had anything to

do with the hiring or enlisting of the man, whose name is mentioned in it, if there is no evidence to show that he had, you will return a verdict of not guilty as to Perkins, and as you take up each bill, so examine and declare upon it. As to the other defendant I have not a word to say, my friends on the other side have fully gone into the case and given you the law and the facts bearing upon it.

There is this principle which rests at the basis of law, that the crime must be proved to have been perpetrated. Therefore, so far as the defendant Perkins is concerned, consider him not connected in this case with the other defendant, but on trial alone, and then ask yourself the question—did Mr. Perkins do anything at all to enlist or get off Gilroy or any other person? You will find that the burden of the testimony bears directly against such a conclusion and shows that he had nothing to do with it. I think, therefore, that you will be able to arrive at your verdict readily and without difficulty. It would be a task of the most painful character, if his Honor after hearing the evidence in this case, were to proceed to pass sentence on this defendant, however indiscreet in speech he may have been, as you can but entertain a great doubt of his guilt. The law says that if you have a reasonable doubt of the guilt of the person charged, such a doubt as would arise in any reasonable mind, such doubt is the safeguard of the defendant, and entitles him to an acquittal. I hope you will have no difficulty in this case, but that at least you entertain a doubt which favors the defendant, and will relieve his Honor from passing sentence. I ask you to find a verdict of not guilty as to the defendant Perkins.

Mr. VAN DYKE—In reply, said he would follow, with pleasure, the example of his learned friends on the opposite side, and briefly bring this protracted trial to a close. He desired to confine himself strictly to a reply to the positions taken by the counsel for the defendants.

The act of the 20th April, is one of easy and simple construction. The learned gentleman, Mr. Remak, who first addressed the Court in behalf of the defendants, is wrong, in supposing that there have been no judicial decisions, which shed light upon the act of Congress. In 1832, John D. Quincy was indicted under the third section of this act, for fitting out and arming a vessel, with the intent, that such vessel shall be employed in the service of a foreign prince. The case went up to the Supreme Court of the United States, and is to be found in sixth Peter's Reports. It will be observed, upon examination of that case, the law in reference to our neutrality, is somewhat different from the general criminal law of the country. The argument there, made by Mr. Williams for the United States, was, that these acts of Congress should be construed according to the meaning and intention of Congress, and in support of this argument, he cited, that part of Judge Marshall's opinion on the penal laws of the United States, as reported in the case of United States vs. Wiltberger 5, Wheaton 95, "that, although penal laws are to be construed strictly, they are not to be so construed, as to defeat the obvious intention of the legislature. This argument was answered in an able manner by Mr. Wirt, but Justice Thompson delivering the opinion of the court, said, 'it was sufficient to establish, by this testimony, the committal of the crime, according to the *plain meaning* of the words used in defining the offence.'"

The whole policy of our neutrality laws require a liberal construction of the statute, if, indeed, it is to be effective in preserving our neutrality between foreign belligerants.

It is also contended by another counsel of Mr. Hertz, (Mr. Cuyler) that there must have been an absolute contract and consideration paid. This position is not the law, as I understand it. The retaining, whether by coaxing or otherwise, was sufficient. The engaging, which is the meaning of the word retaining, whether by means of present pay, or the promises of future compensation, is sufficient.

But here there was an absolute contract. This is a question of fact for the jury, and if they so find, any difficulty on the question raised by the eloquent counsel is avoided. The conditions of the contract were verbal, and its execution was consumated by the signatures of the parties to the roll book, each one signing that book, clearly understanding what he was to do, and what he would receive for it. That contract stands for all legal purposes in the same position, as though it had been entirely in writing, and were it not from its very nature and general character void, ab-initio, could be enforced in any court of common law, and the bounty or pay mentioned for the services, could be recovered from any private contracting parties. Debts and damages are daily recovered upon agreements, much more carelessly made. The terms of the contract were, on the one side, that Peter Muhn and William Budd, and a score of others engaged should go to Halifax, for the purpose of enlisting; and on the other hand, certain remunerations was to be paid them by the defendant's principal, for the performance of their part of the agreement.

The pay was to be received, it is true, after they arrived at Halifax; part of that pay was the privilege of being received into the Queen's service. They were, also, to receive a free ticket and passage to their destination. This contract was considered so binding, that one of the witnesses tells us, that force would be used at the barracks to compel the enlistment, when there, and even the poor privilege of repentance was not allowed to the indiscrete and hasty. They were, also, to receive a mouthly pay. Now, if this is not an absolute hiring of a party to enlist, then nothing is, and the act of Congress is a dead letter, and should be repealed.

Mr. Cuyler—What was it a contract to do?

Mr. Van Dyke—A contract, sir, to go beyond the limits of the United States, with the intent to enlist in the British service. And, if any doubt existed, on the question of intent, such doubt is removed, by the indisputable fact, that the men actually did enlist, and are, in all probability, at this moment in the Crimea.

It is admitted that the parties who make this contract must be indicted in the district where the contract is made, in the place where the parties are engaged. In a case which has recently been tried before the U. S. District Court for the Massachusetts District, the case of U. S. vs. Lewis Kazinski, reported in 8 Monthly Law Reporter, p. 254, the prosecution failed substantially, because the hiring took place in New York, and the trial was had in Boston, the Court ruling that the expression of intent made in New York could not be given in evidence, and confined the prosecution to expressions of intent made in the District where the crime was charged to have been committed, and, the recruits on board the vessel upon which they were arrested having expressed a different intent from that expressed at the time of hiring in New York, the cause failed, amongst other reasons, for the want of the proof of the intent required by the act. *Exempli gratia.* To make the case more intelligible, suppose the party which left Philadelphia on the 25th of March, in the charge of Capt. Strobel, had, after their arrival within the limits of the Southern District of New York, expressed their intent to be to go to Halifax to work on the railroad, and Mr. Strobel, who had, in fact, assisted to engage the men in Philadelphia, had been arrested, and, under the second

section of act of 1818, indicted in the Southern District, where he happened to be found in charge with the recruits, and the able prosecuting officer for that District should offer to prove the expressions used by the recruits in Philadelphia as to their intent when arriving in Halifax, the Court would hold him to the proof of expressions of intent made in the Southern District of New York, where the offence of hiring and engaging is charged to have been committed, and particularly so, when the fact is brought to the knowledge of the Court that the evidence as to the intent expressed in the two places differ most materially and substantially. Now, this was the case of the U. S. vs. Kazinski, and for this want of sufficient proof of the *intent*, in the District where the trial took place, the defendants were acquitted.

But this case is important for other reasons. It settles two of the fundamental questions which must arise in every prosecution under the second section of this Act of Congress.

First. The meaning of the term hiring or retaining, which is to be construed in their every day acceptation, and is virtually nothing more than "engaging"—the word used by the learned Judge.

Secondly. That the hiring must be within the District where the crime is charged to have been committed, and I have shown that such hiring, so far as it could be consummated anywhere, was actually done here.

A single word, in reply to the remark of Mr. Cuyler, as to the propriety of prosecuting this defendant, while persons of more importance are permitted to pass unpunished. I agree with my learned friend that it is rather unfair in one sense, that Mr. Hertz, the more humble instrument of a great nation, should suffer for the acts of his superiors. But Mr. Hertz was a free agent, and acted voluntarily in the whole affair. He sought for and obtained the position under Mr. Crampton and Mr. Howe, which enabled him to violate our law, and he has no right to complain if he suffers the penalty of his own wilful misconduct, and it is the duty of the jury, if they believe him guilty, so to find him. You will also recollect, gentlemen, that the prosecution of this defendant was the only means by which the Executive of the United States could be best informed of the impropriety of the conduct of those representatives of the British government, who have been accredited as fit and honorable men, claiming peculiar privileges near our Government. I have no doubt that this trial has furnished such information, and that such steps will be adopted as are sanctioned by international law. But with that you have nothing to do here. Your only duty is to impartially inquire into the conduct of Mr. Hertz and Mr. Perkins, and to render a fair verdict under the evidence. With that verdict, whatever it may be, I shall have no complaint to make.

Mr. Van Dyke having concluded, Hon. JOHN K. KANE, charged the Jury as follows:

I intended, gentlemen of the Jury, when we separated, to avail myself of the leisure afforded me to put my charge in writing, but I have been prevented by controlling circumstances from doing so, and my remarks to you therefore, will be less closely connected perhaps, though I trust they will not be on that account, less intelligible and clear.

The case has involved, in its progress, a train of facts of very considerable political interest—perhaps of more general interest in that aspect of it, than in its bearing on the questions which are to be decided by your verdict. There are very few among us, probably none, who have not felt aggrieved at the tone with which the press of foreign countries, and occasionally of foreign statesmen of the day, have commented upon what they have been pleased to call *over alacrity* of the American people to engage in military controversies in which they properly had no rightful part. Our people and our government have been accused of forgetting the obligations of neutrality, and pushing ourselves forward into the conflicts of foreign nations, instead of minding our own business as neutrals and leaving belligerents to fight out their own quarrels. For one, I confess that I felt surprised, as this case advanced, to learn, that during the very time that these accusations were fulminated against the American people by the press of England, there was, on the part of eminent British functionaries here, a series of arrangements in progress, carefully digested, and combining all sorts of people, under almost all sorts of influences, to evade the laws of the United States by which our country sought to enforce its neutrality; arrangements matured, upon a careful inspection of the different sections of our statutes, ingeniously to violate their spirit and principle without incurring their penalty, and thus enlist and send away soldiers from our neutral shores to fight the battles of those who were incontinently and not over courteously admonishing us to fulfil the duties of neutrality.

I allude to these circumstances, and this train of thought, gentlemen, not because it is one that should influence your action as jurors, but because I feel it my duty to guard you against its influence. The question which you have to decide is not whether there has been an effort on the part of any foreign functionary to evade the provisions of our acts of Congress, but whether these two defendants have or have not violated the provisions of the act of Congress, which are cited in these bills of indictment; your verdict will respond to the simple question, are these two men guilty of the crime with which they are charged.

In order that my remarks may not hereafter be embarrassed by the necessity of using the plural when the singular is more appropriate, I will say to you, at the outset, that there is no evidence against one of these defendants. Before a jury can properly convict an individual of a crime, they must be satisfied, by clear evidence, that the crime has been committed by some one. We have no statute which affects to punish braggart garrulity; and, unless the particular offence of enlisting certain definite persons has been committed by Perkins, one of the defendants, though he may have proclaimed upon the house-tops that he has recruited armies innumerable, no jury can properly convict him of the offence he professes to have engaged in.

I pass to the consideration of the case of the defendant, Hertz. He stands indicted, sometimes jointly with an other, sometimes alone, with the offence of having hired and retained certain persons to go out of the United States, for the purpose of enlisting and entering themselves as soldiers in the service of a foreign prince, state, or territory.

The act of Congress is in these words—I read the words material to the question, leaving out those which apply to a different state of circumstances.

"If any person shall, within the territory of the United States, hire or retain any person to go beyond the limits of the United States, with the intent to be enlisted in the service of a foreign prince, he shall be deemed guilty of a high misdemeanor."

The question which you have to pass upon is—did Henry Hertz hire or retain any of the persons named in these bills of indictment to go beyond the limits of the United States, with the intent to be enlisted or entered in the service of a foreign State.

Did he hire or retain a person? Whatever he did was within the territory of the United States.

The hiring or retaining does not necessarily include the payment of money on the part of him who hires or retains another. He may hire or retain a person, with an agreement that he shall pay wages when the services shall have been performed. The hiring or retaining a servant is not generally by the payment of money, in the first instance, but by the promise to pay money when the services shall have been performed; and so a person may be *hired* or *retained* to go beyond the limits of the United States, with a certain intent, though he is only to receive his pay after he has gone beyond the limits of the United States with that intent.

Moreover, it is not necessary that the consideration of the hiring shall be money. To give to a person a railroad ticket, that cost $4, and board and lodge him for a week, is as good a consideration for the contract of hiring, as to pay him the money with which he could buy the railroad ticket and pay for his board himself. If there be an engagement on the one side to do the particular thing, to go beyond the limits of the United States with the intent to enlist, and on the other side an engagement, that when the act shall have been done, a consideration shall be paid to the party performing the services, or doing the work, the hiring and retaining are complete.

The meaning of the law then, is this: that if any person shall engage, hire, retain or employ another person to go outside of the United States to do that which he could not do if he remained in the United States, viz: to take part in a foreign quarrel; if he hires another to go, knowing that it is his intent to enlist when he arrives out; if he engages him to go because he has such an intent, then the offence is complete within the section. Every resident of the United States has the right to go to Halifax, and there to

enlist in any army that he pleases; but it is not lawful for a person to engage another here to go to Halifax for that purpose. It is the hiring of the person to go beyond the United States, that person having the intention to enlist when he arrives out, and that intention known to the party hiring him, and that intention being a portion of the consideration, because of which he hires him, that defines the offence.

I believe, that after making this comment upon the law, I might pass on to the fact; but it occurs to me to add, that you are not to require proof of the connexion of the defendant with each particular fact and circumstance which has been given in evidence, to show the working out of the general plan.

If you believe the witnesses, the object here was to effectuate an enlistment beyond the borders of the United States, and yet escape from the provisions of this section; to do effectively and yet not seem to do. If you are satisfied, no matter what was the avowed object of the party, no matter what the pretext, if you are satisfied that Henry Hertz was here engaged in hiring and retaining men to go off to Nova Scotia, there to enlist, that being their intention, and he believing that it was so, and therefore hiring them; then, no matter what was the costume or mask which the transaction wore, he has committed the offence charged in the bill of indictment.

As to the evidence, gentlemen, you have listened to it very carefully, and it has been commented upon abundantly. I do not know that it is my duty to detain you by a single remark on it. It is all on one side. Whether it establishes the fact is for you to judge. The enlistment neccessarily includes the action of different parties; the concert between them is to be inferred from their acts. The intention of the party, engaged or retained to enlist, is to be gathered from his conduct and declaration here, from his conduct after he reaches the foreign country, and from the action of third persons with whom he perfects the enlistment that he may have contracted for here. You are, therefore, while looking primarily at the conduct of Hertz, to look also at the actions of others tending to the same objects; and if you judge that they were actually in concert with him, then all their acts, done in pursuance of the common purpose and plan are to be regarded as his.

With these remarks, I leave the case in your hands.

At the conclusion of the Judge's charge, the Jury retired and returned in about 15 minutes. On taking their seats, the Clerk of the Court, in the usual form, put the question—"Gentlemen of the Jury, have you concluded upon your verdict?" To which the Foreman replied—"We have."

Clerk—How say you, guilty or not guilty?

Foreman—Guilty as to Henry Hertz, in manner and form as he stands indicted on all the bills of indictment; as respects Emanuel C. Perkins, not guilty.

The Jury were then discharged. Sentence deferred for the present.

And now, September 29th, 1855, Theodore Cuyler, Esq., and Stephen Remak, Esq., for Mr. Hertz, move for a rule, for a new trial, and by leave of Court, file the following reasons.

UNITED STATES *vs.* HENRY HERTZ. } In the District Court of the United Statets, sur indietment for unlawful enlisting, &e.

1. That the learned Judge erred in admitting in evidence, proof of the acts and deelarations of other persons, done and said in the absenee of defendant.

2. The learned Judge erred in his construction of the language and meaning of the Aet of Congress, 1818, under which these indietments are framed. That he held and so instruetcd the jury, that the words "hire or rctain," employed in said Aet, would be satisfied by less than an absolute contraet, founded upon sufficient eonsideration, and capable of legal enforeement, if the srme were not made unlawful by the provisions of said Aet.

3. The weight of the evidenee was clearly and deeidedly, that no person was "hired or retained to enlist, or to leave the United States," with intent to enlist, but the several persons sent to Halifax were engaged to go, and were sent there with the distinet understanding that they were there to determine whether they would or would not enlist, and were, *until then*, entirely free and at liberty, bound by no eontraet or engagement, and therefore having no intent, &c., within the meaning of the Act of Congress.

4. The verdiet was against the evidence, and

5. The verdiet was against the law.

THEODORE CUYLER.
STEPHEN S. REMAK.

And now, Oetober 12th, 1855, the motion for a rule for new trial, eoming on before HON. JOHN K. KANE, is argued by THEODORE CUYLER, ESQ., and STEPHEN S. REMAK, ESQ., for the motion, and the same being denied, and new trial refuscd.

MR. VAN DYKE said—The motion of the defendant for a new trial being refused, I ask leave to present to this Court, the confession whieh has been made to me by the defendant, HENRY HERTZ.

This prosecution has not been merely local in its tendencies, nor the influence of its results, likely to be confined to the sphere of an ordinary prosecution in this district. Its results are of a far more extended importance.

The disclosures made in the progress of this cause, may be the ground work of an important step on the part of the Federal Government, in relation to those who have been instrumental in producing that system of interferenec with our affairs whieh have formed the basis of this prosecution.

I am permitted to say, that the trial which has just resulted in the conviction of this defendant, was authorized by the National Executive, and before making the motion which I intend to submit to your Honor, I beg leave to read the instructions which I have received in relation to this trial.

Being aware that the system of enlistments had been effectually broken up by the prompt execution of the warrants which I had caused to be issued for the arrest of various parties, and by the efficient aid which Mr. Wynkoop, the Marshal of this District, and his officers, had otherwise furnished me in ferreting out the system adopted for the evasion of our laws, I had supposed there might not be any urgent necessity in pressing the prosecution of the defendants who have just been tried, and had written to the Attorney General of the United States, asking whether it was the desire of the Administration further to press these prosecutions: to which I received the answers dated September 13th, 1855, and also the letter dated September 17th, 1855, both of which I shall take the liberty of reading to the court.

Mr. Van Dyke read the letters as follows:

ATTORNEY GENERAL'S OFFICE,
September 12, 1855.

SIR:—In reply to your letter of the 10th inst., on the subject of the indictments pending against persons charged with recruiting for the military service of Great Britain, I have the honor to make the following observations.

Mr. McKeon has been advised of the desirableness of conferring with you personally, either by himself or his assistant, in regard to new evidence, to which he may have access, and which can be useful to you.

I suggest the expediency of trying only *a part* of the cases now, especially if you fail to convict in some leading case.

But the most important consideration is this:

This Government has, of course, addressed to that of Great Britain, such demands of public redress and satisfaction in the premises, as the national honor requires. But the Government of Great Britain, with extraordinary inattention to the grave aspect of its acts, namely, the flagrant violation of our sovereign rights involved in them, has supposed it a sufficient justification of what it has done, to reply, that it gave instructions to its agents, so to proceed, as not to infringe our municipal laws; and it quotes the remarks of Judge Kane in support of the idea that it has succeeded in this purpose. It may be so. Judge Kane is an upright and intelligent judge, and will pronounce the law as it is, without fear or favor. But if the British Government has, by ingenious contrivances, succeeded in sheltering its agents from conviction as malefactors, it has, in so doing, doubled the magnitude of the national wrong, inflicted on the United States.

This Government has done its duty of internal administration in prosecuting the individuals engaged in these acts. If they are acquitted, by reason

of a deliberate undertaking of the British Government, not only to violate, as a nation, our sovereign rights as a nation, but also to evade our municipal laws—and that undertaking shall be consummated by its agents in the United States—when all this shall have been judicially ascertained, the President will then have before him the elements of decision, as to what international action it becomes the United States to adopt in so important a matter.

I am, very respectfully,

C. CUSHING.

JAS. C. VAN DYKE, Esq., U. S. Attorney, Phila.

ATTORNEY GENERAL'S OFFICE,
17th September, 1855.

SIR—I desire to make a further suggestion in regard to the trial of parties charged with recruiting soldiers in the United States for the service of the British Government.

It is known that instructions on this subject were given by that Government to its officers in the United States. We are told by Lord Clarendon that those officers had "stringent instructions" so to proceed as not to violate the municipal law—that is, to violate its spirit, but not its letter. If so, the instructions themselves violate the sovereign rights of the United States.

But, in the meantime, every Consul of Great Britain in the United States is, by the avowal of his Government, subject to the just suspicion of breach of law; while, apparently, he must either have disobeyed his own Government, or, in obeying it, have abused his consular functions by the violation of his international duty to the United States.

In these circumstances, it is deemed highly necessary that the British Consul at Philadelphia, or any other officer of the British Government, shall not be suffered to interfere in the trials, as he attempted to do on a previous occasion;—that no letter of his be read, except in the due form of evidence, and that if he have anything to say, he shall be put on the stand by the defence, in order that he may be fully cross-examined by the prosecution.

It is clear that he has no right, by any rule of public law, or of international comity, to be heard in the case by the Court, otherwise than as a witness, whether enforced or volunteer.

I have the honor to be, very respectfully,

C. CUSHING.

JAS. C. VAN DYKE, Esq., U. S. Attorney, Phila.

Your Honor will perceive that the object in this prosecution has been as much to break up the general system, which had been adopted by the British Government, to violate our municipal laws, as it was to punish those who should be found guilty as the instruments of that Government.

If the present defendant, since his conviction, has contributed in any manner to aid the Government in this investigation, and that aid has been the result of a sincere regret and repentance for his past conduct, it is, in my opinion, but just that he should have the benefit of his present conduct in the sentence which your Honor may see fit to pronounce in his case.

I therefore move that the defendant's confession be read, and that it be filed of record among the proceedings in the cause—to be duly considered by the Court, in the judgment which may hereafter be pronounced against the defendant.

Per curiam. Let the paper be read and filed of record.

THE CONFESSION IS AS FOLLOWS:

UNITED STATES } In the District Court of the United States, in
vs. and for the Eastern District of Pennsylvania.
HENRY HERTZ. }

UNITED STATES,
Eastern District of Pennsylvania, ss.

Be it remembered, that on this 11th day of October, A. D. 1855, before me, Charles F. Heazlitt, a Commissioner of the United States, personally came Henry Hertz, who being duly sworn, says:

That sometime in the month of January, 1855, I read in the London *Times* a notice of the passage of a resolution of the British Parliament, authorizing the enlistment of a Foreign Legion. A day or two afterwards I went to the United States Hotel, where I heard three or four gentlemen speaking of this country as a place where enlistments could best be made. One gentleman by the name of Miller, pointed at me, as the man best fit for enlisting men for the British service, because, as he said, I am so well known among the German and foreign population. One of the gentlemen sitting there arose and said to me, "I am an English officer; I am not particularly engaged in this matter now, but I can tell you how to embark in it without running any risk, and I would be glad if you would engage in it; but in order to accomplish this, it is necessary for you to go to Washington and see Mr. Crampton, the English Ambassador."

From what I learned afterwards, the name of the gentleman was Mr. Bruce McDonald. Two or three weeks afterwards I went to Washington, and was introduced by many gentlemen by letters to Mr. Crampton. I had obtained these letters without telling those gentlemen the object of my visit—but before delivering any of these letters of introduction I addressed a note to Mr. Crampton, requesting an interview with him; that note did not state the object of the interview. The principal object of my visit to Mr. Crampton was to ascertain whether I could safely embark in this enterprise. I was stopping at Willard's Hotel, and in reply to my note, I received the note hereto annexed, marked A. (C. F. H.) (This note has been published in Mr. Strobel's testimony, and will be found, *ante*, at top of page 42.) After the receipt of this note I called on Mr. Crampton, at his residence; it was on Sunday morning when I called; I saw Mr. Crampton; he said in substance:—"Your letters of introduction assure me that I may have full confidence in you; I have not sufficient authority yet

from the Home Government with regard to the matter, but I expect early authority from Lord Clarendon. I have already received a letter from Lord Clarendon, inquiring how many men might be enlisted in this country for British service, and what the United States Government would think of such an attempt. I can tell you this; that if you embark in this matter you can make a great deal of money; if procuring of men for the English service should be undertaken, it will be very advantageous to you; but I expect a letter from Lord Clarenden by the next steamer, which may be expected in eight or ten days, giving me full explanations and instructions how the matter is to be conducted." In this conversation he had reference to enlistments in this country for the Crimean war. He stated that he had answered Lord Clarendon's first letter, and that the letter he expected was in reply to his answer. He did not state the contents of his answer to Lord Clarendon's letter. He then said, "I have nothing more to tell you to-day, but when I receive Lord Clarendon's letter I will write to you." I returned to Philadelphia, and should have thought nothing more of the subject, but about the 5th of February, 1855, I received a letter from Mr. Crampton, through the Post Office, which letter is hereto annexed, marked B, (C. F. H. The letter referred is published ante, second letter on page 42.) I sent him a telegraphic despatch, that I was too much engaged to come to Washington now, but that I would call upon him at Washington as soon as my time would permit it.

I went some days afterwards, say three or four days, to Washington, and saw Mr. Crampton at his private residence; he was indisposed. I told him I had received his letter and desired to know what I had to do. Mr. Crampton replied—"I have received a letter from Lord Clarendon, which contains the statement that the British Government has made arrangements to establish depots at some place in Canada, on the frontier of the United States, in order to receive the men who may be procured in the United States. In pursuance of this information, I have sent my special messenger to the Governor General of Canada and to the Commanding General of the troops in Canada, (whose name I believe is Roy,) requesting them to designate the places where depots may be established for the reception of persons who may be procured in the United States." I informed Mr. Crampton that I had incurred expenses already by coming twice to Washington, and that I would have to waste more time until the messenger returned, and that I would have to neglect my business; I therefore requested him to refund to me the expenses already incurred by me. Mr. Crampton replied. "I have at present no money at my disposal, and have no authority to give you any, but I am certain you will be paid not only for your services, but that your expenses will be repaid to you. I asked Mr. Crampton what was to be done? How is the matter to be conducted? he said, "as far as I know there is a law in the United States, forbidding the enlisting of soldiers within the Territory of the United States—it is, however not difficult to evade this law, because who can prevent you from sending laborers to Canada, but we must take care to do this in such a way that it shall not appear in defiance of the Government. My idea is further, that if you have 25 or 30 men together, that either yourself or some other confidential person should take them direct by railroad to Montreal, where, I think, a depot may be erected." I then asked him "when do you think this matter will commence?" Mr. Crampton said, "I cannot say precisely yet, because my messenger will perhaps be prevented from returning to Washington very soon, as the roads are obstructed by ice and snow. It is possible that he will call on you at Philadelphia on his return from Canada, and will give you the necessary information. In the mean time you

may call on our Consul, Mr. Matthew, in Philadelphia, and he, Mr. M., will probably be able to give you the necessary instruction." The conversation with regard to the procuring men was finished, but I reverted again to the law bearing upon the subject. I asked him "how am I backed in case a charge is made against me—I have a wife and children."

Mr. Crampton replied, "first, that the law was exceeding lax—and secondly, that if anything should happen, the British Government would not allow any one to suffer who had been engaged in assisting them in furnishing the men." I replied that "the popular voice is against this matter," but Mr. Crampton said "never mind about this popular voice; if a house in Liverpool fails, the whole United States trembles." After Mr. Crampton had given me such assurances, and had used the expression "I give you my word as a gentleman that nothing unpleasant shall happen to you," I then made up my mind to act for the British Government. Before I left, Mr. Crampton assured me that he would send a man to my house in Philadelphia, who would make such arrangements with me as would enable me to procure men, and send them to their destination. I then returned to Philadelphia, and waited ten days, without hearing anything of the matter. I called then on Mr. Matthew, the British consul, in this city. Mr. Matthew received me very politely, and informed me that he was just reading a letter from Mr. Crampton, in which my name is mentioned. He further said, "We (speaking of his government) are very anxious to procure men; but alas! we have not received any instructions from Canada as to where the depots are to be erected—however, we expect every day and every hour the return of the messenger." About three, four or five days after that, I visited Mr. Matthew again—he then said to me, I would advise you to go down to Washington again, for," said he "although I do not know of any of the particulars of the case; yet I have no doubt Mr. Crampton does, and can give you all the information necessary." This was about the 15th of February. I went to Washington again, and saw Mr. Crampton, though he was indisposed. All that I could learn from him was that in a week or two he would send a man to my house in Philadelphia—this man he said he expected would be sent from the Government in Canada to my house, with instructions and means for the recruiting of men in this country. In this conversation Mr. Crampton also stated to me, that if I should get into any difficulty, I should employ eminent counsel. He also said that so far as he could ascertain, the Government of the United States would not interfere in the matter. I must distinctly aver that, in particular this last statement and representation on the part of Mr. Crampton, gave me such full assurance that I did not, for one moment, think it possible that I could be charged with a misdemeanor or crime. I thought that the matter had been privately arranged between the United States and the English Government, Mr. Crampton endeavored to, and did, leave that impression on my mind. I was led so to believe from what Mr. Crampton said to me. I returned to Philadelphia, and in about a week afterwards, on returning home from my office one day, my wife handed me a slip of paper, on which was written "Joseph Howe, Jones' Hotel, Parlor No. 1."—She stated that the gentleman whose name was on the paper called and spent with her two hours waiting for me. After dinner on the same day, I called on Mr. Howe at his hotel—and saw him—he asked my name which I gave him.—He said he was extremely glad to see me, as his time for staying in Philadelphia was very limited, that he had to go to New York and Boston, where his agents expected to see him in a few days; I asked him what authority he had for engaging me to

enlist men for the Foreign Legion? He answered, "I am authorized by the Governor, Sir Gaspard le Marchant, of Nova Scotia, who, in accordance with instructions from the English Government, is the only man who had control of the Enlisting Service for the Foreign Legion, and the especial control over the depot in Halifax, established for the men procured in the United States." I told him this is all very well, but I have not the pleasure of knowing the Governor. He answered me, "Mr. Crampton has given me your direction, and recommended you as a man in whom I can place full confidence." I answered him "that I would believe anything, but I should like to see some documents from Mr. Crampton." He said "I am sorry that I cannot show you such at present, as the only document I have received from Mr. Crampton was an introduction to Mr. Matthew, and that letter I have already delivered." I said I would be satisfied if Mr. Matthew would corroborate his statement, and then I would be willing to act on his proposition." He asked me to see him again the next morning at 9 o'clock. I called at 9 o'clock the next day, and met there Captain Rumberg, Lieut. Van Essen and another gentleman by the name of Link, a friend of Mr. Van Essen. Mr. Howe introduced me to those gentlemen, who I knew before, but had never any conversation with them about the recruiting business. He, Mr. Howe, said "Gentlemen, I suppose you know Mr. Hertz; he is the only confidential Agent for the State of Pennsylvania to get men for the Foreign Legion." I said to him, "I have not got so far yet, and stand upon my demand of yesterday; referring to his statements being corroborated—He said, "that is all right, that gentleman," meaning Mr. Matthew, "knows you already."

This interview was on the 13th March. He said, "I am glad to hear that Mr. Matthew has made all inquiry about your character, and feels fully satisfied." Mr. Howe then said to Mr. Rumberg, "that he would get a Colonelship, and Van Essen a Captaincy, and told me by all means to send off those men (Mr. Rumberg and Van Essen,) with the first transport, in that capacity. I answered "that if I was satisfied I would do so." He bowed to these gentlemen, and begged to be excused, as he wished particularly to speak with me alone. They went away. Mr. Howe then said, "I have heard from Mr. Crampton, that you are a man of limited means; and as means are necessary, he could furnish me with any amount." I told him I wanted £250 to £300 to start with. He answered that is only a trifle. You need not be economical, as money was no object at all—I cannot give you more than $300 at present, as I have drafts on different places, which I will put in the hands of one man, and this man would get authority from me to furnish you with the means you want." "That it would be necessary to get men as quick as possible, and for this purpose I think it would be best to insert some advertisements in the German papers, and in the English papers that are most read by the Irish population, who are Her British Majesty's subjects." I asked him what he meant to insert or advertise—if he thought it proper that I should call for volunteers, he said "that will not do, but I will write you an advertisement which you may insert immediately without running any risk." He wrote this paper (hereto annexed marked C. C. F. H.)—This paper is the original proclamation published ante on page 41) in my presence, and delivered it into my hands. He also wrote a contract for me to sign, in which I acknowledged myself to be a referee for the Governor of Nova Scotia, and was willing to send men. I was to receive $8 for each man sent to Halifax, and extra for each man that was competent to be an officer—£4 extra. And for Sergeants I was to receive $4 extra. I did not know at the time that this contract was illegal,

and have never received anything for any services I rendered Mr. Howe. Mr. Howe stated in this conversation, in the presence of Rumberg, Van Essen and Link, that Mr. Crampton had given him the direction of each of us, referring to Rumberg, Van Essen and myself, as the only persons with whom he was to confer in this city, and that Rumberg and Van Essen has been highly recommended to Mr. Crampton by some Freneh Ambassador.

He then went to his writing desk, took $300 out, and was handing them to me. I told him, "I do not take any money from you." I had so told him once before—as I actually wanted the money through the hands of Mr. Matthews. I was at this time still doubtful whether I should embark in this enterprise, as all I have been stating now was mere conversation—and I had not done anything at all that could make me liable in any shape or form. I desired to test the question whether I should act or not, thinking that Mr. Matthew would not play any part in this affair, if it would be against the law of the country, and I therefore asked that the first step be taken by him.

Mr. Howe then said, "if I would prefer that Mr. Matthew, should given you the money it should be done so." I answered, that his doing so was a great object to me, as he, Mr. Howe, was only a transient visitor, and could leave the States any time he was disposed, but Mr. Matthews, as a British functionary in this city, would feel himself bound to cover me if anything should happen, or any charge should be made. He said, "I am very glad to hear that you are so cautious, and I will meet your wishes, please call to-morrow morning, here, at nine o'clock, and if I have not left the city, I will take you to the room of Mr. Matthews, in the same hotel, and he will give you the money; but if I have left, go to Mr. Matthews in his office, and get the money there, if he has not before sent it to your house; I asked him why he stayed at Jones' Hotel;" he said, as the British counsel stopped there, he did so; we shook hands and I went away. In the course of this conversation, Mr. Howe remarked "there is no necessity to be afraid of anything, the laws of the land here, are but poorly enforced, and £100 might purchase all the laws of the land."

On the morning of the 14th of March, I went to Jones' Hotel; Mr. Howe had left, but Mr. Hicks, the book-keeper of Jones' Hoiel, handed me an envelope without an enclosure; on the fly or fold of the envelope, were written these words, "Go to Mr. Matthew, it is all right." I went to Mr. Matthews' office and saw him there; he told me "he had just sent his clerk up to my residence, 424 North Twelfth street, with $300, which Mr. Howe had requested him to give me, and if I would stay there, or come back again in a quarter of an hour, his clerk would be back, as he wished to have me give a receipt for the money;" I remained and conversed about the best plan to begin the matter; Mr. Matthews' observed "that he would be glad to assist me in anything, but it must be a secret, as his official standing would not permit him openly to have anything to do in the matter." The clerk returned, when the conversation ceased at a signal given to me by Mr. Matthew. The clerk handed the packet to Mr. Matthews', and Mr. M. counted to me, $300, and I took the slip of paper marked (D. C. F. H.) in which the money had been enclosed to me. The following is a copy of this paper in hand-writing of Mr. Matthew:

"Mr. Howe requests the $300 sent, may be given to Mr. Hertz, on his receipt in Mr. Howe's name."

He handed me a slip of paper, and asked me "to give him a receipt," he said "be careful to put Mr. Howe's name in it;" I wrote the receipt in these words,

"Received, Philadelphia, 14th March, 1855, of Mr. B. Matthews, Three Hundred Dollars on account of the Hon. Mr. Howe."

Mr. Matthews stated further, that "if you want anything for vessels, or means for conveyance, you must go to Mr. Henry Winsor, on the wharf near Pine street, and he will furnish you with anything in his line; that he, (Mr. Winsor,) had moneys in his hands, or under his control, belonging to Mr. Howe."

I took an office on the 14th of March, and went to the Pensylvanian and Ledger, and inserted the advertisement written by Mr. Howe. The Ledger notice was an abstract, the Pennsylvanian inserted it at length. Mr. Rumberg attended to the advertisements in the Democrat Free Press. On the 16th of March, the business commenced—plenty of men came, and the first day I had so many that I could make a transport. I went down to Mr. Winsor and told him I wanted a conveyance for about 100 to 140 people to Halifax; he said, "There is no possibility to get it from here direct to Halifax, but means are procured to send them from here, with his steamers to Boston, and there the regular packets would take them to Halifax; but at all events, it would not be possible to send such a number before Saturday, the 24th, as the steamer would not go before. I was placed in an unpleasant position, as those men were very poor, and were anxious to start; I was, therefore, necessitated to give them a little money to live; I believe it was the 16th or 17th, in the afternoon, about nine or ten persons, calling themselves English subjects, came to my office; they told me they had just come from the British Counsel, who had sent them to my office to get tickets, which were left there the same day in the morning by T. L. Bucknell. I told them I would give them tickets if they would bring me a written receipt from Mr. Matthews, as I had my instructions to use those tickets with discretion. They went away; in about half an hour after, a message was sent from Mr. Winsor, wishing to see me. I went down; he presented me a letter, addressed to him, from Mr. Matthew in which he desired that Mr. Winsor should get tickets from me, and furnish the people, who had called upon me as English subjects with free passage by the schooner Benita, of Halifax, Capt. Coffin, then laying at Pine street wharf, and pay the Captain $12 for each ticket returned by the Captain to Mr. Winsor. I gave Mr. Winsor 8 tickets, and he gave me the receipt hereto annexed, marked (E. C. F. H. This receipt will be found, ante, page 75,) and I saw the Captain give to Mr. W. a receipt for $96, as the Captain had returned the eight tickets he had received from Mr. W. to him, and bound himself to deliver up those men in Halifax, and further to return to Mr. Winson $12 for each man he should not deliver up in Halifax. The Captain took the 8 men in his schooner, and sailed with them that evening. The same day I wrote a letter to Mr. Howe, asking for funds. Mr. Howe's direction was given me by Mr. Matthew. The following morning I got a telegraphic dispatch, directing me to call on Mr. Windsor and get funds; I went to Mr. Winsor, and told him I wished $500; he told me that he had an order to pay me $100 only, that Mr. Howe would be here perhaps that day or the day after, and he would furnish me with more. At the same time Mr. W. told me that the steamer Granite State did not belong to him any more, that he had sold her to another firm, and he did not think that the firm would pay a charter for taking passengers; that he did not know, therefore, how he would act to-morrow as he could not procure any other vessel. I telegraphed directly to Mr. Bucknell asking him what I should do to get conveyance for my "brave people." I did not get any answer. The reason why I telegraphed to Mr. Bucknell, was that he was the only man to assist the agents in sending away men. Bucknell told me he was the only man that was authorised by Mr. Howe to assist the Agents in sending the men to Halifax, as Mr. Hewe himself was very much occupied, and travelling from one place to another. To get the people away, I went down to Sandford's Line, and made an agree-

ment with Mr. Eldridge to pay him $4 for each man he would take in his steamer to New York, if he could delay the departure of the steamer till Sunday. I wanted to have time to send the men by the steamer Sandford. As Mr. Eldridge did not know me, Mr. Winsor went in and told him that everything that I did he would be responsible for. On the 25th, in the morning, the people were ready to start at 5 or 6 o'clock, but as I had no money to furnish Mr. Strobel, who had command of the party I went up to Mr. Matthew at Jones' Hotel, in his room, at 5 o'clock, and told him the people were there by the wharf, but Capt. Strobel was not willing to start without money, and the poor people wanted to have money in their pockets. He got out of his bed, and got $50, and handed it to me, saying "if that is not enough, I will give you more." I went down to the wharf, and gave $25 to Mr. Strobel, and divided the balance among the men who were going—80 or 90 people. These people were those I had engaged at my office to go. They went off to New York. I went the same night, the 25th, to New York, and went to Delmonico's Hotel, where I found Mr. Bucknell sleeping in Mr. Howe's room. I told Mr. B. that the people either were there, or would come, as they left this morning, and asked how they were to be conveyed to Boston. I also told him that Mr. Strobel would be there, and receive his further orders. Mr. Bucknell said that he would make it all right, that I should go to Mr. Barclay, at his private residence, College Place, and he (Bucknell) would soon be there to make further arrangements. I went away, and returned to Delmonico's in about an hour. I met there Mr. Strobel, who had arrived; he told me that he wanted money to feed the people, that he was obliged to take them in four different parties, to four different boarding houses in Greenwich street. Mr. Bucknell came down, and we went up to his private room, when he told me that he would go with us himself, to Mr. Barclay, at his office in Barclay street, and that I should go with him. I went with him, and he and Mr. Barclay went into an inner room. Mr. Bucknell then came out, and told me to wait in his private room at Delmonico's, that he would come directly, and bring the money. He came and gave me $100, which I delivered in his presence to Mr. Strobel, less $5. I gave him $80 at that time, and had given him $15 before, that morning. We went together to the Astor House, where Mr. Bucknell telegraphed to Mr. Matthew to tell Mr. Cumberland, which means Mr. Howe, not to leave Philadelphia without seeing Mr. Hertz. Mr. Howe, at the time we were in New York, had gone to Washington, and was expected to return in a day or two. I left New York and returned to Philadelphia the same night. Mr. Barclay was the British Consul at New York.

On my arrival from New York, I went directly from the depot to Jones' Hotel, where I saw Mr. Howe. This was on the 26th of March. Mr. Howe told me had returned the same morning from Washington, and as he had received a message from Mr. Bucknell, through Mr. Matthew; he had waited here for the purpose of seeing me, as he was very anxious to see me. He had in the meantime, before my arrival, sent up for Mrs. Hertz to come down and see him as he was indisposed, but she declined to do so. He told me he had come from Washington, after having a very important interview with Mr. Crampton, and that Mr. Crampton told him that as far as he could observe, the government of the United States had begun to feel a little uneasy about this matter—in the meantime that I should go on and care for nothing, as I could be quite sure I would get immediate information in case the United States Government should determine to prosecute the matter. I told him that I was not afraid, as I had the words of such men as Mr. Crampton and Mr. Matthew that nothing should

happen to me. He told me that it was 10 o'clock, and he expected to see Mr. Matthew, as he (Mr. Howe) would leave in the midnight train for New York. I told him that I was surprised that he had not sent me any money, as he said I should not be economical with it. He promised to write a note to Mr. Winsor, and all should be made right the next day, but the next day Mr. Winsor told me he had no orders; Mr. Howe had not seen him. Mr. Howe told me to word my despatches calling the men barrels or parcels. Mr. Howe also said in this last connection, that I could make a large amount of money; that all I had to do was to blow a trumpet in the streets and that I could get thousands for the foreign legion; that Mr. De Korponay was highly recommended as a man of great connection in the West and Texas, and that I should endeavor to see him, and furnish him with the necessary means to start, and that as soon as I had sent him (Howe) word that I had engaged Korponay, he would send me money.

The next morning I received a telegraphic despatch from Mr. Bucknell, asking how many parcels I would send, and that I should hurry them along; that there was another company wanting to join the next expedition, so that they should go to Boston together. I answered him immediately that I supposed 50 to 60 barrels would go off by the Sanford to-day—some 47 went off by the Sanford that day; when I came to my office a half an hour afterwards I was arrested. On Wednesday, the 28th of March, I was arrested, and on the 29th I went to Mr. Matthew's office and found Mr. Matthew in a deep conversation with De Korponay. He left Mr. De Korponay and invited me into the next room, and there said to me, "do not be down-hearted, we will do everything for you in our power;" he meant by "we," Crampton, Howe and himself; he also said, "that I should try to give Mr. Howe information of what had happened, and that I should go down to Mr. Winsor and get $200; I went to Mr. Winsor; he told me he had made all right with Mr. Matthew; I went back to Mr. Matthew's, and he (Mr. Matthew) handed the paper marked F. (C. F. H.) which is now in two parts. This paper Mr. Matthew wrote in my presence. The paper is in the following words:

"Please call at Jones' for $200 left with Mr. Sharwood, the proprietor, by Mr. Howe, at 2 o'clock."

I went up to Mr. Sharwood, the proprietor of Jones' Hotel, and I received $200 of Mr. Hicks, the book-keeper, to whom I showed this paper. The same day I went down to Moyamensing to see Mr. Budd, who had sent me a message that he had no money. I gave him $5. I told him I could not procure bail for him, as the people did not want to go bail for a native who is engaged in a business of this character. My wife accompanied me, on this occasion, to the prison. I returned home with her, and there found a letter addressed to me—afterwards I went out to take a walk with my wife, and walked down Chestnut street, and met the porter of Jones' Hotel. John Allen, I think his name is—he asked me if I had received the letter he had left at my house, that day, as the British consul had given strict orders that the letter should be delivered as soon as possible. The letter is hereto annexed, marked G. C. F. H. —and is the letter I found at my house, on the occasion referred to by the porter. I have seen Mr. Matthew's hand-writing. I know his style of writing, and believe this letter marked G. to be in his hand-writing. The following is a copy of the letter:—

"If the sole name in the warrant and indictment is that of Glenroy, the Marshal is indictable for false arrest of the other parties.

The Counsel—if such a man as J. Tyler, O'Neall, or Lex, will paint this mean arrest in its true colors, he will prove that the parties interested were solely acting for themselves with no powerful friend behind them, to pay fines, from the sole desire to aid in a war which Europe holds to be the war of liberty; the one a German, the other a Britisher.

If they have erred their error is but light. Do these pretending republican authorities seek to wreak vengeance on them for loving freedom with England, better than Russia.

The Counsel's speech should be carefully published, and *will weigh* before a third hearing, which should be obtained.

If in truth, the British Consul had no part in it, the attempt to involve him should be exposed.

It may be easily shown Gilroy is not to be believed on oath. Is he a paid spy and traitor to entrap under false names!!

Honorable Marshal! Honorable District U. S. Attorney!

Honorable men "Captain Power," and "Lieut. Sommers"!!!

What is Gilroy's real name?

Where *really* born? not where he says.

What his character?

What his reward?

Is the German desiring liberty, or the Britisher desiring to aid his country in a war, to be held as a criminal!!!

What has Russia paid the dominant power for this rigor?"

Some of the men who shipped on the morning of the arrest, were not taken by the Marshal, and went on to New York.

The book marked H. is the book in which the names were entered in my office, together with the three sheets of paper marked H. 1. 2. 3. The names in the back of the book were the applicants for commissions.

The tickets produced in court are the tickets I gave to the men. Howe told me that the N. S. R. C. meant Nova Scotia Recruiting Company, but I might translate it Nova Scotia Railroad Company. I had them printed myself. Mr. Howe told me to print them in this way. The white ticket with N. S. R. and J. H. on it, are tickets which I obtained from Mr. Howe myself; the J. H. are in his own handwriting.—I used only eight of these, which were the eight I gave to Mr. Winsor. Those I used had Mr. Howe's seal on in wax.

On Saturday, before Strobel left, I told Mr. Matthew at that time, that the different gentlemen who expected to get a commission, were anxious to know what pay they were to receive. He told me he could not exactly tell me, but that I should call on Dr. Williams, and give him his, Mr. Matthew's compliments, and he would give me Hart's Army List, which would give me the necessary information. I got the book from the Doctor, but could find nothing about the matter. I told Mr. Matthew of the result, and he said I should correspond with Mr. Howe about it, or if he should see him first he would mention it to him. The same night, on my return from New York, Mr. Howe told me he had got all the particulars from Mr. Crampton, so far as he knew it, and handed me the paper marked J. C. F. H.

The paper referred to contains a memoranda, as follows:

"Ensign, 5-4 sterling.

"Lieutenant, 6-8 sterling.

"Captain, 11 and 2 sterling."

This paper states the pay of an ensign, 5s. 4d. per day; lieutenant, 6s. 8d.; a captain, 11 shillings, and 2 shillings for rations. Mr. Howe said those prices referred to the per diem pay. I believe this paper to be in Mr. Crampton's handwriting.

The handbill marked K. C. F. H. (this is the handbill with the Queen's arms on it, already printed, ante page 15,) is the bill brought me by Mr. Bucknell, together with the white tickets with Howe's seal on them. These bills are the same as those posted in my office. All these bills were destroyed in the presence of Mr. Bucknell, the next day, together with the tickets he brought me, except the eight I gave to Mr. Winson. He brought me 900 odd tickets, with Mr. Howe's seal on.

When Mr. Bucknell was arrested, Mr. Matthew sent me word by a friend that he would be much obliged to me, if I would not call on or correspond with him any more in this case, as he had apprehensions that he was closely watched by the U. S. officers. The same friend of Mr. Matthews told me it would be best for me to go direct to Halifax. Mr. Bucknell told me the same thing. Before I went to Halifax, I wrote a note to Mr. Matthew. He answered me that he could not do, nor would he do any thing for me in this case, which he had before directly stated to me, and that I had used some improper remarks against him. I answered him, that I was surprised to hear such remarks from him, as I had only said that the functionaries of the British government were perfidious, and I still think so.

I left for Halifax, and had in my possession a letter to Mr. Howe, stating what he ought to do in my behalf. At New York, I went to the office of Mr. Barclay, and saw Mr. Stanley, the Vice Consul; he spoke with me about Mr. Howe, and told me that he was sorry that such heedless men as Mr. Howe had brought me and other honest people in a scrape, without assisting us; he also told me that Bucknell was going to Halifax, and that he, Mr. Bucknall, was in the same position as myself. Mr. Stanley told me that Mr. Matthew had paid Mr. Bucknell expenses, including lawyer's fees, all the expenses he had incurred, and expressed surprise that the same had not been done for me. Mr. Stanley paid my expenses from Halifax. I met at Mr. Stanley's office Mr. Jesson, who went from this place with Strobel to Halifax. He told me in Stanley's presence that he, Strobel, and some other officers from Halifax had been sent to the United States, and were now in the United States, and were under the special control of Mr. Crampton, and any money or funds they required would be given them by different British officials, and the money which he, Jesson, required for enlisting purposes, he had to obtain from Mr. Crampton himself, and that he would go that same night to Mr. Crampton for that purpose. This was in the first part of June, about the 7th, long after my arrest, Mr. Jesson said he was at that time going on in the enlisting business, under the direction of Mr. Crampton, and I saw him send 15 men on that occasion to Boston, via steamboat, to go from thence to Halifax. Mr. Jesson told me he was then on his way to Washington to obtain money from Mr. Crampton for that purpose, that the whole enlisting business was now entirely under the special supervision of Mr. Crampton, who had taken the matter entirely in his own hands. This conversation was in the office of Mr. Stanley, who paid Mr. Jesson some money in my presence to pay for fifteen tickets for the men who were to go off that day.

I went with Mr. Jessen to the steamboat, and saw him pay the clerk of the boat for the passage of these men. I saw the men arrive the next day in Boston. They were taken charge of by another English officer named Thune. He boarded them at different boarding houses, and told me they were to go to Halifax. I took the Cunard steamer

for Halifax, where I arrived on the 9th. I met Mr. Carstensen at Halifax; we took a cab and drove out to Melville Island. I saw in the barracks most of the people I sent from here; they were equipped and were being drilled. The officer received me with great kindness, and Mr. Van Essen went with me to the city. At supper, Mr. Van Essen was called out, and did not return. I met Mr. Howe, on landing from the steamer, he greeted me very kindly, but said he had no time to see me, and stepped on board the steamer for England—that was the same steamer I arrived in. The next morning, the 10th, I went again to Melville Island, to see Mr. Von Essen, who had promised to introduce me to Sir Gaspard lè Marchant. I was received by a man calling himself Major Weis, who told me there were strict orders not to allow me to come to the Island again. I asked him to show me the order, for unless I saw it I would not leave the Island if he were twenty times Major. He had no written order, and I went on the Island. He sent immediately to the Governor for instructions; in the meantime, he ordered the people and officers not to speak with me. In about a half hour the order arrived, and he presented it to me. I told him it was the order of the Governor of the Province—that I would like to see the order of the Military Governor, for without it I would not leave. He sent again to the Fort, and the Commanding English Colonel of the forces came himself, and told me that no strangers were permitted to come on to the Island. I left in company with the Colonel, in his calache.

The barracks at Melville Island, where the soldiers are kept, are a parcel of wooden sheds, scarcely equal to those in which a good Pennsylvania farmer keeps his cattle. I then went up to Sir Gaspard lè Marchant, introduced myself, and told him what I wished. In the beginning he did not desire to have any connection with me at all, but after I had presented to him, in strong language, the manner in which I had been treated in Philadelphia, as well as in Halifax, he replied, it was not his fault, but Mr. Howe's. He also said that Mr. Howe had used $120,000 in the recruiting business, and inasmuch as he had rendered no account of it yet, he could not tell how my account stood—that in the meantime I should give him a written statement of what I wished, and he would answer me the next day. I gave him the statement, and the next day I received the letter marked L. (C. F. H.) (This letter is already published, and will be found, ante, pages 42, 43, dated June 11th, 1855.) I left Halifax the next morning. At the time he delivered the letter, which was handed to me by Mr. Wilkins, in the presence of Sir Gaspard, he told me that "when you return to New York, go to Mr. Stanley, and that he, Mr. Stanley, will then be able to settle with you." When I arrived at Windsor, I wrote a letter to the Governor, Sir Gaspard lé Marchant, in which I repeated all that I had said to him the day before, and told him that when I came to New York, if Mr. Stanley had no orders from him, I would publicly call on Mr. Crampton, Mr. Matthew, &c., and make them account for the inducements held out to me, and through which I was brought into this difficulty. I arrived in New York two days afterwards, from Windsor, and called on Mr. Stanley; but as I had anticipated, he had no orders.—Mr. Stanley begged me to be quiet, and not make any noise, and assured me that I should be munificently compensated for my services for the Foreign Legion. I went to Howard's Hotel, where I remained some time. While there, an old gentleman came in, asking me to abandon the English side. I said "I can't do it."

I returned to Philadelphia about the 15th of June, and waited until the 17th for a letter, which Mr. Stanley had promised to write. I did not receive it, and, therefore, wrote him a letter, in which I requested him to pay for my services—I meant the

money the Government owed me, and which he promised to obtain. I received in reply the letter marked M. (C. F. H.,) hereunto annexed. This letter is already published, and will be fouud, ante, on page 44, at top of page.

Previously to my going to Halifax on the 23d of May, I wrote a letter to Mr. Crampton, in which I stated that I had received information that he (Mr. Crampton) and his Secretaries, all together, had said that I was in correspondence with the Russian Government, for the purpose of betraying their secrets, and if they did not apologize for making this charge, I would call upon him and the Russian Minister to make a statement. To this letter I received the letter hereto annexed, marked N. (C. F. H. This letter is already published and will be found, ante, at middle of page 43.)

All that I did, in procuring and sending men to Halifax, for the foreign legion, was done by the advice and recommendation of Mr. Crampton, Mr. Howe and Mr. Matthew. I was employed by Mr. Howe, and acted as his agent, with the knowledge and approbation of Mr. Crampton and Mr. Matthew. Mr. Matthew knew of both the expiditions I sent. He approved and encouraged me in sending them away. He encouraged me by his advice and counsel, and in giving me money to send them away.

The statement which I now have made, I have made voluntarily, without any inducement other than the regret I feel in having violated the laws of this country, and the desire which now prompts me to make every reparation in my power, by confessing my own fault, and exposing those who have induced me to enter into this illegal business. I make this statement in the hope that it may have its proper influence upon the Government of the United States, in relation to any future action in the prosecution against me. I have made it, however, without any promise as to such future action, placing myself entirely upon the clemency of those who have the power to act in the premises.

HENRY HERTZ.

In testimony of all, which I hereunto subscribe my name and affix my seal, this Eleventh day of October, A. D. 1855, and in the eightieth year of the Independence of the said United States.

CHARLES F. HEAZLITT,

U. S. Commissioner.

Trials.

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